

No. 13258

United States
Court of Appeals
For the Ninth Circuit.

CLAUDE E. SPRIGGS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
District of Arizona.

FILED

MAY - 5 1952

PAUL P. O'BRIEN
CLERK

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For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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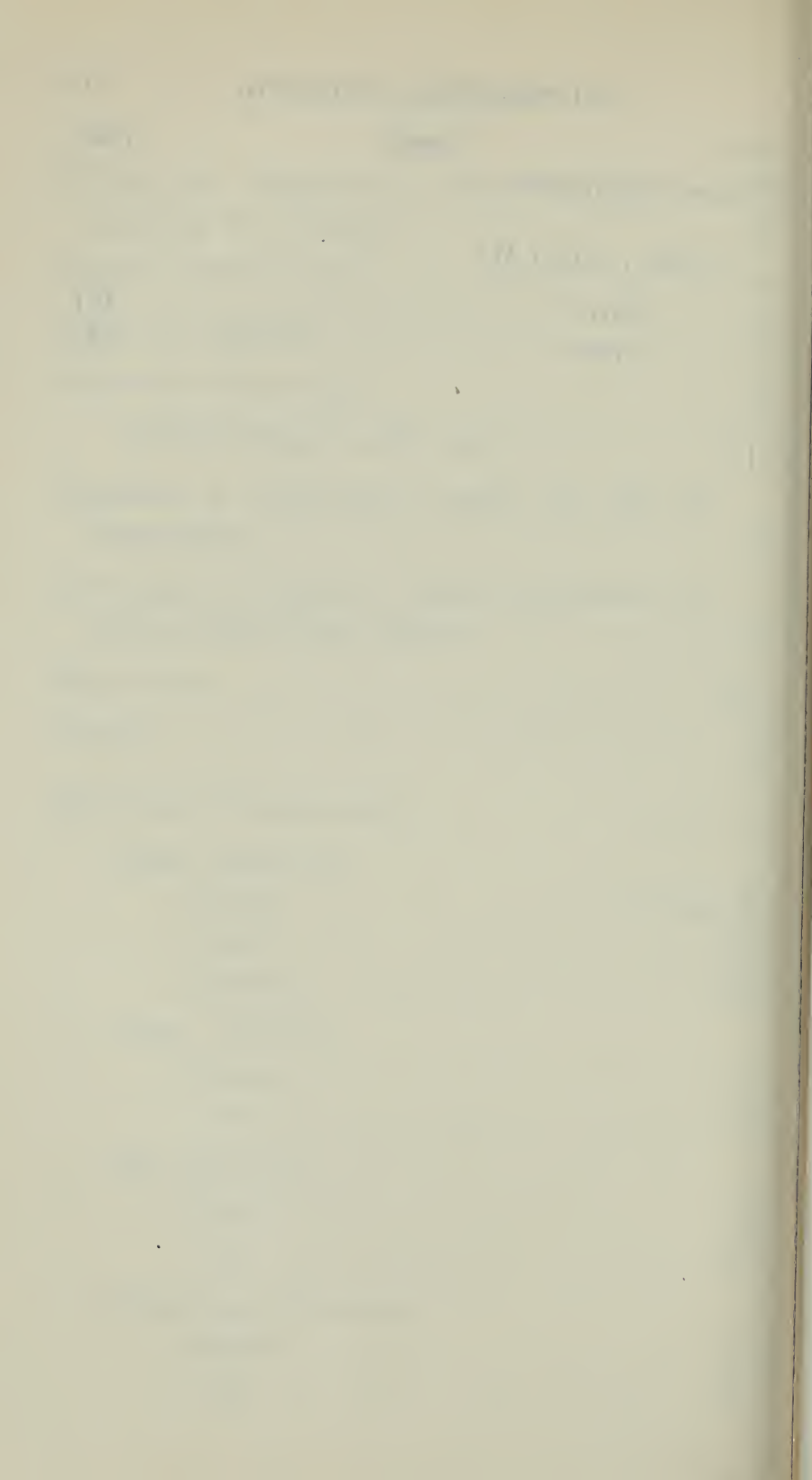
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ATTORNEYS OF RECORD

W. T. CHOISSER, ESQUIRE,
Phoenix National Bank Building,
Phoenix, Arizona,

Attorney for Appellant.

FRANK E. FLYNN, ESQUIRE,
United States Attorney;

E. R. THURMAN, ESQUIRE,
Assistant United States Attorney,
Phoenix, Arizona,

Attorneys for Appellee.

THE HISTORY OF THE

REIGN OF
HIS MOST EXCELLENT MAJESTY
CHARLES THE FIRST

BY
JAMES HALLAM

IN TWO VOLUMES.
LONDON:
PRINTED BY R. CLAY AND COMPANY,
11, BUNYARD STREET, IN THE CITY.

1850.

BY APPOINTMENT TO HIS MAJESTY,
PRINTED BY R. CLAY AND COMPANY,
11, BUNYARD STREET, IN THE CITY.

In the United States District Court
for the District of Arizona

No. C-9558 Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLAUDE E. SPRIGGS,

Defendant.

INDICTMENT

Violation: 26 U.S.C. 145(b) (Attempt to defeat
and evade income tax)

The Grand Jury charges:

Count I

That on or about the 22nd day of January, 1945, at Phoenix, County of Maricopa, State and District of Arizona, Claude E. Spriggs did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1944, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, a false and fraudulent income tax return wherein it was stated that he suffered a net loss in income of \$147.25 and that the amount of tax due thereon was none, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$5,459.64, upon which said net income there

was owing to the United States of America an income tax of \$854.91.

Count II

That on or about the 10th day of January, 1947, at Phoenix, County of Maricopa, State and District of Arizona, Claude E. Spriggs did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, a false and fraudulent income tax return wherein it was stated that he suffered a net loss in income of \$350.61 and that the amount of tax due thereon was none, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$4,051.59, upon which said net income there was owing to the United States of America an income tax of \$390.78.

Count III

That on or about the 7th day of January, 1948, at Phoenix, County of Maricopa, State and District of Arizona, Claude E. Spriggs did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona, at Phoenix, a false and fraudulent income tax return wherein it

was stated that his net income for said calendar year was the sum of \$1,928.19 and that the amount of tax due thereon was none, whereas, as he then and there well knew, his net income for the said calendar year was the sum of \$7,048.95, upon which said net income there was owing to the United States of America an income tax of \$1,058.03.

A True Bill.

/s/ FRED R. BOYER,
Foreman.

/s/ F. E. FLYNN,
United States Attorney.

[Endorsed]: Filed April 5, 1951.

[Title of District Court and Cause.]

RESPONSE TO DEFENDANT'S MOTION FOR
BILL OF PARTICULARS

Comes Now the United States of America, plaintiff herein, by Frank E. Flynn, United States Attorney for the District of Arizona, and E. R. Thurman, Assistant U. S. Attorney, and in response to defendant's motion for bill of particulars respectfully submits the following:

I.

Count I of the Indictment:

Net Income for 1944\$5,459.64

Unreported legal fees consist
of the following items:

- (a) Fees received from Struckmeyer
& Struckmeyer\$2,332.49
- (b) Fees received by Claude E. Spriggs
as disclosed by his own bookkeep-
ing records 32.37

Total 2,364.86

Legal fees per income tax return 1,900.42

Legal fees unreported 464.44

Unreported taxable capital gains
consist of the following:

- (a) Profit on sale of interest in Hi-De-
Ho Bar on 4/29/44 to Mr. Wil-
burn Brown 2,407.92
- (b) Profit on sale of Lot 13, Block 1,
Mountalair Addition, Safford,
Arizona, to Mr. Stewart M. Bai-
ley on 8/9/44 908.28
- (c) Profit on sale of real estate con-
tract to Wilburn Brown on
10/30/44, pertaining to realty
located at 756 E. Portland,
Phoenix, Arizona 500.00

Total unreported taxable capital gains..... 3,816.20

Unreported interest income
consists of the following:

- (a) Interest received from Mr. Otis
Sasser on or about 8/17/44 500.00
- (b) Interest paid by Mrs. Jessie Go-
mez on various dates during
the year 1944 562.50
- (c) Interest paid by Helen Pittman
on various dates during the
year 1944 88.75
- (d) Interest paid by Mr. Wilburn
Brown during each of the
months June to December,
1944 175.00

Interest income unreported 1,326.25

Understatement of net income 5,606.89

Reported net income per return (Loss) (147.25)

Net income per indictment \$5,459.64

II.

Count II of the Indictment:

Net Income for 1946	\$4,051.59
Unreported taxable capital gains consist of the following:	
(a) Taxable profit on sale of real property in Phoenix, Arizona, to Stephen B. Rayburn on 6/1/46	\$1,958.21
(b) Taxable profit on sale of real property located in Safford, Arizona, to the firm of Larson & McBride on 1/7/46	887.50
(c) Settlement of conditional sales contract and joint venture with Wilburn Brown by pay- ment by Wilburn Brown to defendant on 10/21/46.....	500.00
 Total unreported taxable capital gains.....	<u>\$3,345.71</u>
Depreciation overstated:	
Overstatement of depreciation by the defendant is the result of his hav- ing falsely represented the cost of the property located on Henshaw Road, Phoenix, Arizona, on which he claimed excessive depreciation in the amount of	1,150.69
Reduction of business income:	
This item consists of law practice ex- pense not claimed by the defen- dant and allowed by the examin- ing Internal Revenue agent	(94.20)
Understatement of net income	<u>4,402.20</u>
Reported net income per return (Loss)	(350.61)
Net income per indictment	<u>\$4,051.59</u>

III.

Count III of the Indictment:

Net Income for 1947	\$7,048.95
Unreported taxable capital gains consist of the following:	
(a) Taxable portion of profit on sale of Lots 7 and 8, Block 15, Col- lins Addition, Phoenix, Ari- zona, to Jesse Arreola on 8/14/47	\$1,698.15
(b) Taxable portion of profit on sale of Lot 5, Eastwood Place, Pho- enix, Arizona, to Howard M. Vandenberg on 11/20/47	544.64
Total unreported taxable capital gains	\$2,242.79
Depreciation overstated:	
This item consists of the overstate- ment of depreciation by the defend- ant as the result of his having falsely represented the cost of his property located on Henshaw Road, Phoenix, Arizona, on which he claimed excessive depreciation in the amount of	2,978.60
Understatement of net income	5,221.39
Reported net income per return	1,928.17
Total	7,149.56
Arithmetical error on return	100.61
Net income per indictment	\$7,048.95

FRANK E. FLYNN,

United States Attorney for the
District of Arizona.

/s/ E. R. THURMAN,

Assistant U. S. Attorney,
Attorneys for Plaintiff.

Copy mailed.

[Endorsed]: Filed May 31, 1951.

In the United States District Court
for the District of Arizona

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

PLEA

Minute Entry of June 18, 1951

This case comes on regularly for plea this day. The defendant is present in person with his counsel, W. T. Choisser, Esquire. The defendant pleads not guilty, which plea is now duly entered.

It Is Ordered that the defendant be allowed fifteen days within which to file any additional pleadings to the indictment.

It Is Ordered that this case be and it is set for trial November 13, 1951, at 10:00 o'clock a.m.

In the United States District Court
for the District of Arizona

Honorable Peirson M. Hall, U. S. District Judge,
Specially Assigned, Presiding.

[Title of Cause.]

PROCEEDINGS OF TRIAL

Minute Entry of November 14, 1951

This case comes on regularly for trial this date. E. R. Thurman, Esquire, Assistant United States

Attorney, appears for the Government. The defendant is present in person with his counsel, W. T. Choisser, Esquire.

Louis L. Billar is present as official reporter.

Both sides announce ready for trial.

A lawful jury of twelve persons is now duly empaneled and sworn to try this case.

It Is Ordered that all jurors not empaneled in the trial of this case be excused until further order.

On motion of the court the Rule is invoked and all witnesses are instructed and excluded from the courtroom. Arthur R. Beals and Lloyd Tucker are excluded from the operation of the Rule.

Counsel for Government waives opening statement to the jury and counsel for defendant reserves statement to jury.

Government's Case

William McRae is now sworn as witness on behalf of the Government.

Stipulation filed on November 8, 1951, is now read to the jury by counsel for Government, and counsel now stipulate that portions of said written stipulation may be amended, which amendments are now read into the record.

William McRae is now examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

1. Income Tax Return, 1944.
2. Income Tax Return, 1946.
3. Income Tax Return, 1947.
5. Declaration of Estimated Tax.

The following Government's witnesses are now sworn and examined on behalf of the Government:

Robert R. Weaver.

Wilburn Brown.

The following Government's exhibits are now admitted in evidence:

7. Receipt.

8. Receipt.

9. 3 Receipts.

10. 2 Receipts.

And thereupon, at 12:05 o'clock p.m., It Is Ordered that the further trial of this case be continued until 2:00 o'clock p.m., to which time the jury, being first duly admonished by the court, the defendant and counsel are excused.

Subsequently, at 2:00 o'clock p.m., the jury and all members thereof, the defendant and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

Government's Case Continued

Wilburn Brown is now recalled and further examined on behalf of the Government.

Government's Exhibit 11, check is now admitted in evidence.

The following Government's witnesses are now sworn and examined:

Stewart M. Bailey.

Arthur R. Beals.

Otis Sasser.

Defendant's Exhibits A and B, each a cancelled check, are now admitted in evidence.

The following Government's witnesses are now sworn and examined:

Jessie Gomez.

Vernon H. Householder.

Government's Exhibit 17, check, is now admitted in evidence.

The following Government's witnesses are now sworn and examined:

Helen Pittman.

W. H. (Bill) McBride.

Government's Exhibit 21, draft, is now admitted in evidence.

And thereupon, at 4:30 o'clock p.m., It Is Ordered that the further trial of this case be continued until November 15, 1951, at 10:00 o'clock a.m., to which time the jury being first duly admonished by the court, the defendant and counsel are excused.

It Is Ordered that Government's Exhibits 19 and 20 be returned to witness Helen Pittman at conclusion of trial.

In the United States District Court
for the District of Arizona

Honorable Peirson M. Hall, U. S. District Judge,
Specially Assigned, Presiding.

[Title of Cause.]

DEFENDANT'S ORAL MOTION FOR JUDG-
MENT OF ACQUITTAL AS TO COUNT 3
AND ORDER DENYING SAID MOTION

Minute Entry of November 15, 1951

The jury and all members thereof, the defendant
and all counsel are present pursuant to recess, and
further proceedings of trial are had as follows:

Government's Case Continued

Kemper P. Mauzy is now sworn and examined
on behalf of plaintiff.

On stipulation of counsel, portion of records of
County Recorder of Maricopa County concerning
Struckmeyer property is now read into the record.

The following witnesses are sworn and examined
on behalf of the Government:

Thomas S. Krone,
Stephen B. Rayburn,
Howard N. Van Denburgh,
Harry C. Jones,
James A. Struckmeyer,
Marjorie Ross.

Thomas S. Krone is now recalled and further
examined on behalf of the Government.

Arthur R. Beals is recalled and further examined on behalf of the Government.

Government's Exhibit 28, Work Sheet, is now admitted in evidence.

And thereupon, at 12:00 o'clock noon, It Is Ordered that the further trial of this case be continued until 2:00 o'clock p.m. to which time the jury, being first duly admonished by the court, the defendant and counsel are excused.

Subsequently, at 2:10 o'clock p.m. the jury and all members thereof, the defendant and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

Joseph Morgan is now sworn to report the evidence herein.

Arthur R. Beale is recalled and further examined on behalf of the Government.

The following Government's exhibits are now admitted in evidence:

29. Statement.

30. Statement.

31. Statement.

32. Statement.

6. Check.

It Is Ordered that the defendant's objections to Government's Exhibits 29, 30, 21, and 32 be sustained.

Lloyd M. Tucker is now sworn and examined on behalf of the Government.

Government's Exhibit 33, Affidavit, is now admitted in evidence.

Government's Exhibit 34, Statement, is now admitted in evidence.

Counsel for Government makes offer of proof, which offer is rejected by the court.

The Government rests.

And thereupon, at 3:30 o'clock p.m., the jury being first duly admonished by the court, is excused until 10:00 o'clock a.m., November 16, 1951.

Counsel for defendant now moves for Judgment of Acquittal as to Count 1 of the Indictment on ground the evidence adduced wholly fails to support or substantiate the allegations of Count 1 and moves to strike portions of the Bill of Particulars pertaining to Count 1.

It Is Ordered that said Motion to Strike and said Motion for Judgment of Acquittal be granted as to Count 1 of the Indictment.

Counsel for defendant now moves for Judgment of Acquittal as to Count 2 of the Indictment on ground the evidence adduced does not substantiate the allegations of Count 2 and moves to strike portions of Bill of Particulars as to Count 2.

It Is Ordered that said Motion to Strike and said Motion for Judgment of Acquittal be granted as to Count 2 of the Indictment.

Counsel for defendant now moves for Judgment of Acquittal as to Count 3 of the Indictment on grounds and for the reasons the evidence adduced does not sustain the allegations of Count 3 and moves to strike portions of Bill of Particulars as to Count 3.

It Is Ordered that subdivisions (a) and (b) of

said Bill of Particulars as to Count 3 of the Indictment be stricken, and

It Is Ordered that said motion for Judgment of Acquittal as to Count 3 of the Indictment be denied.

And thereupon, at 4:50 o'clock p.m., It Is Ordered that the further trial of this case be continued until November 16, 1951, at 10:00 o'clock a.m., to which time the defendant and counsel are excused.

In the United States District Court
for the District of Arizona

Honorable Peirson M. Hall, U. S. District Judge,
Specially Assigned, Presiding.

[Title of Cause.]

RETURN OF VERDICT

(Minute Entry of November 16, 1951)

The jury and all members thereof, the defendant and all counsel are present pursuant to recess, and further proceedings of trial are had as follows:

The jury is now advised by the court of court's ruling on defendant's motion for Judgment of Acquittal; and Judgment of Acquittal as to Counts 1 and 2 is now signed by the court.

Defendant's Case

The following defendant's witnesses are now sworn and examined:

Victor H. Pulis,
Fred O. Wilson.

And the defendant rests.

Both sides rest.

And thereupon, at 10:20 o'clock a.m., It Is Ordered that this court do stand at recess. Whereupon, the jury being first duly admonished by the court, the court and counsel retire to Chambers for purposes of settling instructions.

Subsequently, at 11:00 o'clock a.m., the jury and all members thereof, the defendant and all counsel are present pursuant to recess and further proceedings of trial are had as follows:

All the evidence being in, the case is argued by respective counsel to the jury. Whereupon, the court duly instructs the jury and said jury retire at twelve o'clock noon in charge of sworn bailiffs to consider of their verdict.

It Is Ordered that the record show defendant's Motion for Judgment of Acquittal at close of the evidence is denied.

It Is Ordered that the Marshal provide meals for said jury and their bailiffs during the deliberation of this case at the expense of the United States.

Subsequently, the defendant and all counsel being present, the jury return in a body into open court at 2:20 o'clock p.m. and all members thereof being present, are asked if they have agreed upon a verdict. Whereupon, the Foreman reports that they have agreed and presents the following verdict, to wit:

“VERDICT

“C-9558 Phoenix

“UNITED STATES OF AMERICA,

“Plaintiff,

“Against

“CLAUDE E. SPRIGGS,

“Defendant.

“We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Claude E. Spriggs, Guilty as charged in count three of the indictment.

“Dated:

“CHAS. KORRICK,

“Foreman.”

The verdict of guilty is read as recorded and on motion of the court, It Is Ordered that said jury be polled. Whereupon each juror is called by the clerk and asked if this is his verdict and each of said jurors' answers in the affirmative. Whereupon, the jury is discharged from the further consideration of this case and excused until further order.

It Is Ordered that this case be set for sentence Monday, November 19, 1951, at 9:30 o'clock a.m. and referred to Probation Officer for pre-sentence investigation.

It Is Ordered that Government's Exhibits 19, 20, 22, 23, 24, 25, 26 and 27 be delivered to United States Attorney for return to owners thereof.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Claude E. Spriggs, Guilty as charged in count three of the indictment.

Dated:

/s/ CHAS. KORRICK,
Foreman.

[Endorsed]: Filed Nov. 16, 1951.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL
NOTWITHSTANDING THE VERDICT

Comes Now the defendant and moves the Court for a judgment of acquittal notwithstanding the verdict, upon the ground and for the reason that the evidence and the whole thereof is insufficient to sustain a conviction of Count III of the Indictment.

/s/ W. T. CHOISSER,
Attorney for Defendant.

[Endorsed]: Filed Nov. 19, 1951.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The Court erred in admitting testimony and exhibits of witnesses Arthur R. Beals and Lloyd M. Tucker, to which objections were made.

5. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: counsel for the government stated in his argument that defendant had inserted certain items of and for the purpose of taking depreciation upon property listed for the calendar year 1947 and had deliberately inserted an item of \$20,000.00 with depreciation thereon of \$2,000.00 for the express purpose of evading a tax and which no evidence in the trial of the matter was introduced.

/s/ W. T. CHOISSER,
Attorney for Defendant.

[Endorsed]: Filed Nov. 19, 1951.

In the United States District Court
for the District of Arizona

Honorable Peirson M. Hall, U. S. District Judge,
Specially Assigned, Presiding.

[Title of Cause.]

ORDER DENYING DEFENDANT'S MOTION
FOR NEW TRIAL AND MOTION FOR
JUDGMENT OF ACQUITTAL, ETC.

(Minute Entry of November 19, 1951)

This case comes on regularly for judgment and sentence this date. E. R. Thurman, Esquire, Assistant United States Attorney, appears for the Government. The defendant, Claude E. Spriggs, is present in person with his counsel, W. T. Choisser, Esquire.

The defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict and Motion for New Trial are now argued by counsel.

It Is Ordered that said Defendant's Motion for Judgment of Acquittal Notwithstanding the Verdict be and it is denied.

It Is Ordered that said defendant's Motion for New Trial be and it is denied.

The defendant is now afforded an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment, and the defendant states he is ready for sentence. Thereupon, the Court finds that no legal cause appears why judgment should not now be imposed and renders judgment as follows:

In the United States District Court
for the District of Arizona

No. C-9558—Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLAUDE E. SPRIGGS,

Defendant.

JUDGMENT

On this 19th day of November, 1951, at Phoenix, Arizona, came the Attorney for the Government and the defendant appeared in person and by counsel, Wm. T. Choisser, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violating Title 26, Section 145 (b), United States Code (attempt to defeat and evade income tax), as charged in count three of the indictment.

The court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant pay a fine in the sum of \$1,000.00 together with the costs of prosecution taxed at \$546.98, on said count three of the indictment, and that said defendant be committed to the custody of the Attorney General or

his authorized representative for imprisonment until said fine is paid or he is otherwise discharged by law.

It Is Ordered that the execution of the judgment herein be and it is stayed until Wednesday, November 21, 1951, at five o'clock p.m., upon the following terms and conditions: That the defendant shall, within the period herein specified, pay to the clerk of this court for deposit in the registry fund, said fine in the sum of \$1,000.00, and a sum not less than \$500.00 towards the payment of said costs; and upon the expiration of the time to take an appeal if an appeal is not taken, or upon the final disposition of an appeal and the approval and spreading of the mandate affirming the judgment if an appeal is taken and the judgment is affirmed, the money so deposited shall forthwith be transferred by the clerk to the Treasurer of the United States in satisfaction of the fine and payment on the costs herein.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed and Docketed Nov. 21, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Claude E. Spriggs,
730 West Coronado Road, Phoenix, Arizona.

Name and Address of Appellant's Attorney: Wil-
liam T. Choisser, 505 Luhrs Tower, Phoenix,
Arizona.

Offense: Violation of Title 26, U.S.C. 145 (b),
Count III of Indictment (attempt to defeat
and evade income tax.)

Verdict of guilty as to Count III of indictment
returned November 16, 1951;

Judgment of conviction entered on November 19,
1951;

Order denying motion for judgment of acquittal
notwithstanding the verdict denied November 19,
1951;

Order denying motion for new trial denied No-
vember 19, 1951.

Judgment and sentence to pay a fine of \$1,000.00
and costs made and entered November 19, 1951.

I, the above-named appellant, do hereby appeal
to the United States Court of Appeals for the Ninth
Circuit, from the above-stated judgment and orders.

Dated this 21st day of November 1951.

/s/ W. T. CHOISSER,
Attorney for Appellant.

Copy received.

[Endorsed]: Nov. 21, 1951.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY UPON APPEAL

I.

That the Court erred in denying defendant's motion for judgment of acquittal, made at the conclusion of the evidence, and also his motion for judgment of acquittal notwithstanding the verdict upon the ground and for the reason that there was no competent evidence adduced during the trial herein to support the verdict and judgment as rendered herein; that there was no evidence whatsoever tending to show that the defendant had as his net income for the calendar year 1947 the sum of Seven Thousand Forty-eight and 95/100 (\$7,048.95) Dollars, and upon which there was due and owing an income tax in the sum of One Thousand Fifty-eight and 03/100 (\$1,058.03) Dollars to the United States of America, as alleged in Count III of the indictment herein.

II.

That there was no competent testimony whatsoever introduced as to any acts of the defendant in substantiation of Count III of the indictment, except as might be adduced from the testimony and exhibits introduced in connection therewith of the witnesses Arthur R. Beals and Lloyd M. Tucker, to which testimony and exhibits timely objections were made, and by reason of the rule of law that

statements on conversations with the defendant may not be properly introduced until by independent evidence the corpus delicti of the charge has been proved by separate and independent testimony and showing the connection of the defendant therewith.

III.

That the defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

Counsel for the Government stated in his argument that defendant had inserted certain items of and for the purpose of taking depreciation upon property listed for the calendar year 1947, and had deliberately inserted an item of \$20,000.00 with depreciation thereon of \$2,000.00 for the express purpose of evading a tax and which no evidence in the trial of the matter was introduced.

Dated this 21st day of January, 1952.

Respectfully submitted,

/s/ W. T. CHOISSER,
Attorney for Defendant.

Copy received.

[Endorsed]: Filed Jan. 21, 1952.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To: The Clerk of the United States District Court, in and for the District of Arizona, and to the United States of America, and its attorney, Frank E. Flynn, attorney for appellee:

The appellant herein, Claude E. Spriggs, hereby designates the following record and portions thereof and the transcript of the proceedings and evidence adduced herein to be contained in the record on appeal, to wit:

1. The indictment;
2. The verdict;
3. Motion for judgment of acquittal as to Count 3 of said indictment;
4. Judgment;
5. Reporter's Transcript of Evidence;
6. Exhibits in Evidence;
7. All Minute Entries and Orders pertaining to appellant, made during trial;
8. Motion for New Trial;
9. Notice of Appeal;
10. Statement of Points upon which appellant intends to rely upon appeal;
11. This designation.

Dated at Phoenix, Arizona, this 21st day of January, 1952.

/s/ W. T. CHOISSER,
Attorney for Appellant.

Copy received.

[Endorsed]: Filed Jan. 21, 1952.

[Title of District Court and Cause.]

APPELLEE'S DESIGNATION OF
RECORD ON APPEAL

To: The Clerk of the United States District Court,
in and for the District of Arizona, and to
Claude E. Spriggs and his attorney, W. T.
Choisser:

The Appellee herein, United States of America,
hereby designates the following record and portions
thereof to be contained in the record on appeal,
to wit:

1. Order denying appellant's motion for judgment as to Count III of said indictment.
2. Order denying defendant's motion for new trial.
3. This designation.

Dated at Phoenix, Arizona, this 30th day of January, 1952.

FRANK E. FLYNN,
United States Attorney;

/s/ E. R. THURMAN,
Assistant U. S. Attorney.

Copy received.

[Endorsed]: Filed Jan. 30, 1952.

In the United States District Court
for the District of Arizona

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

ORDER EXTENDING TIME TO
DOCKET APPEAL

(Minute Entry of December 21, 1951)

On motion of W. T. Choisser, Esquire, counsel
for defendant,

It Is Ordered that the defendant's time within
which to file the Record on Appeal herein and
docket the Appeal in the United States Court of
Appeals for the Ninth Circuit, be and it is ex-
tended to and including January 30, 1952.

In the United States District Court
for the District of Arizona

Honorable Dave W. Ling, United States District
Judge, Presiding.

[Title of Cause.]

ORDER EXTENDING TIME TO
DOCKET APPEAL

(Minute Entry of January 25, 1952)

It appearing to the Court that the defendant's
Designation of Record on Appeal was filed herein

on January 21, 1952, and that the Government has ten days thereafter within which to file its designation of additional portions of Record on Appeal, and that the time for docketing the Appeal herein expires January 30, 1952,

It Is Ordered that the time of the defendant in which to file the Record on Appeal herein and docket the Appeal in the United States Court of Appeals for the Ninth Circuit be and it is extended to and including February 16, 1952.

In the District Court of the United States
for the District of Arizona

C-9558-Phx.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLAUDE E. SPRIGGS,

Defendant.

REPORTER'S TRANSCRIPT

The above-entitled and numbered cause came on duly and regularly to be heard before the Hon. Peirson M. Hall, Judge of the United States District Court, specially assigned, presiding with a jury, commencing at the hour of 10 o'clock a.m. on the 14th day of November, 1951.

The Government was represented by E. R. Thurman, Esq., Assistant United States Attorney.

The defendant, Claude E. Spriggs, was represented by W. T. Choisser.

The following proceedings were had:

The Clerk: Case Number C-9558, Phoenix, United States of America, plaintiff, versus Claude E. Spriggs, defendant, for trial.

Mr. Thurman: The Government is ready, your Honor.

Mr. Choisser: The defendant is ready.

The Court: The defendant is present in person?

Mr. Choisser: The defendant is present in person.

The Court: Very well, call the jury.

(Whereupon, 28 prospective jurors were called and seated in the jury box.)

The Court: Very well, ladies and gentlemen of the jury, you are called here this morning to sit as jurors in the trial of a criminal case. It is Case Number C-9558 in this Court, wherein the United States is plaintiff and Claude E. Spriggs is the defendant. The Government is represented by Frank E. Flynn, the United States Attorney, who is not present in Court, but the case will be presented by Mr. E. R. Thurman, the Assistant United States Attorney. I don't know whether all of you know Mr. Thurman or not. Will you stand up so they can all see you?

(Mr. Thurman arose in the courtroom.)

The Court: Very well. Do you have your assistant here?

Mr. Thurman: This is Mr. Tucker from the Internal Revenue who worked on the case.

The Court: Worked on the case. Mr. [2*] Tucker, stand up and turn around so they can all see you.

(Mr. Tucker complies.)

The Court: Mr. Tucker, of the Internal Revenue Bureau, who will assist Mr. Thurman in connection with the presentation of the case to the jury.

The defendant is present in person, Mr. Claude E. Spriggs. Will you stand up, Mr. Spriggs?

(Whereupon Mr. Spriggs complies.)

The Court: Turn around so they can see you.

(The defendant complies.)

The Court: Thank you. He is represented by Mr. W. T. Choisser. Do I pronounce your name correctly?

Mr. Choisser: Choisser.

The Court: All right, turn around so they can all see you.

(Mr. Choisser complies.)

The Court: The charge here is contained in three counts. It is asserted that the defendant violated the United States Code, the Internal Revenue Statutes. He is charged in the first count with an attempt to defeat and evade income tax which it was alleged to be due from him during the year

* Page numbering appearing at top of page of original Reporter's Transcript.

1944, in that on or about the 22nd day of [3] January, 1945, in this District and in this Division, he attempted to defeat and evade a large part of the income tax due from him for the year 1944 by filing and causing to be filed a false and fraudulent income tax return, wherein it was stated that he suffered a net loss in income of \$147.25, and that the amount of tax due thereon was nothing, whereas, the Government asserts that his net income for the calendar year was, in truth and in fact, \$5,459.64 and that he is alleged to have owed an actual tax of \$854.91.

In Count 2 it is charged that on or about the 10th day of January, 1947, here in this District and in this Internal Revenue Office, he attempted to defeat and evade a large part of the income tax due and owing for the year 1946, by filing what is alleged to have been a false and fraudulent income tax return, wherein he stated he suffered a net loss of \$350.61 and he owed no tax, wherein the Government asserts, in truth and in fact, that his actual income was \$4,051.59, and that the actual amount of his alleged tax due is \$390.78.

In Count 3 it is charged that on the 7th day of January, 1948, he attempted wilfully and [4] knowingly—each one of these charges that he wilfully and knowingly attempted to evade a large part of his tax for the calendar year, '47, by filing and causing to be filed with the Collector of Internal Revenue a false and fraudulent return for that year, wherein he stated his net income for the calendar year was \$1,928.19, and that the amount of tax due

is none, whereas, the Government asserts that his actual income—net income for that year was \$7,048.95, and that his actual tax due is alleged to have been \$1,058.03.

I omitted to state as to each of the counts when I summarized them to you, that it is charged that he did wilfully and knowingly attempt to defeat and evade his tax.

At the appropriate time during the trial you will be instructed, of course, that wilfullness is an essential element of the offense.

(Whereupon, the jury was examined on their voir dire by Court and counsel for both sides, after which, 12 jurors were selected and duly sworn to preside during the proceedings.)

(Thereupon a short recess was had.) [5]

After recess, all parties as heretofore noted by the Clerk's record being present, the trial resumed as follows:

The Court: The Court on its own motion will make an order excluding all witnesses until such time as they are called to the witness stand. The bailiff will show you where the witness room is, where you can stay until you are called. All witnesses are excused except Mr. Tucker.

Mr. Thurman: Mr. Beal, they are both in this case from different angles.

The Court: Mr. Beal, you can come up here and sit at the counsel table if you wish.

Mr. Thurman: I'd rather for him to sit back in the courtroom.

The Court: All right, you can sit inside of the rail. Does the defense have any accountants or somebody you desire to have——

Mr. Choisser (Interrupting): Not at this time, if your Honor please, no, we do not have.

The Court: Very well.

Mr. Thurman: We have no opening statement on behalf of the Government. We will start in with our case.

The Court: Very well, the Government [6] waives its opening statement. Does the defense wish to make an opening statement?

Mr. Choisser: We reserve our statement at this time.

The Court: The defendant reserves his statement. You may proceed.

Mr. Thurman: Mr. McRae—William McRae.

WILLIAM McRAE

was called as a witness on behalf of the Government, and being first duly sworn testified as follows:

The Court: Now, I notice a stipulation here in the file.

Mr. Thurman: Yes, your Honor.

The Court: Do counsel wish to read it to the jury at this time or later?

Mr. Thurman: I think it would be a good time to do it now while we are a little fresher.

The Court: Very well, the parties have entered into a stipulation here concerning the existence of certain facts. You are to take these facts as proven and as existing without any further proof.

(Testimony of William McRae.)

(Whereupon, the following stipulation was read to the jury by Mr. Thurman.) [7]

Mr. Thurman: "Comes now the United States of America, plaintiff herein, by Frank E. Flynn, United States Attorney for the District of Arizona, and E. R. Thurman, Assistant U. S. Attorney, and the defendant, Claude E. Spriggs, by his attorney, W. T. Choisser, and stipulate as follows:

"That the records of the County Recorder for Graham County, State of Arizona, will show the following transfers of property:

"1. Sale by Lola Farmer to Claude E. Spriggs of Lot 13, Block 1, Mountclair Addition, Safford, Arizona, on November 15, 1940.

"2. Sale by Claude E. Spriggs to Stewart M. and Thelma B. Bailey of Lot 13, Block 1, Mountclair Addition, Safford, Arizona, on August 9, 1944.

"3. Sale by Eldon Palmer to Evelyn Lee Spriggs on May 18, 1943, of a farm situated north of the Gila River in Graham County, as recorded in Book of Deeds No. 45, Page 467.

"4. Sale by Evelyn Lee Spriggs and Claude E. Spriggs of a farm situated north of the Gila River in Graham County to Vidal and Jessie Gomez on September 11, 1943.

"5. Sale by Sam Bunin to Claude E. [8] Spriggs of Lots 1 and 2, Block 9, Lassiter Addition, Safford, Arizona, on January 2, 1942.

(Testimony of William McRae.)

“6. Sale by Claude E. Spriggs to Helen Pittman of Lots 1 and 2, Block 9, Lassiter Addition, Safford, Arizona, on October 5, 1943.

“7. Sale by Jessie Udall to Marion Lee of part of Lot 4, Block 6, Townsite of Safford, Arizona, on December 24, 1938.

“8. Deed from Marion Lee to Evelyn Lee Spriggs of part of Lot 4, Block 6, Townsite of Safford, Arizona, on December 24, 1938.

“9. Sale by Claude E. Spriggs to the firm of Larson and McBride, of part of Lot 4, Block 6, Townsite of Safford, Arizona, on January 7, 1946.

“That the records of the County Recorder for Maricopa County, State of Arizona, will show the following transfers of property:

“1. Real estate contract dated October 15, 1944, from F. C. Struckmeyer, et ux., to Claude E. Spriggs, et ux.

“2. Assignment on October 30, 1944, to Wilburn Brown of a real estate contract dated October 15, 1944, from F. C. Struckmeyer, et ux., to Claude E. Spriggs, et ux.

“3. Sale by Nellie B. Wilkinson to Claude E. Spriggs on February 17, 1945, of Lots 1, 2, 3 [9] and 4, Porter and Baxter's Subdivision of Tract 'B,' Phoenix, Arizona.

“4. Sale by Claude E. Spriggs to Stephen B. and Hazel M. Rayburn on June 1, 1946, of Lots

(Testimony of William McRae.)

1, 2, 3, and 4, Porter and Baxter's Subdivision of Tract 'B,' Phoenix, Arizona.

"5. Sale by Frank and Connie Murphy to Claude E. Spriggs on May 28, 1945, of Lots 47 and 48, Block 2, Eubanks Tract, Phoenix, Arizona.

"6. Sale by Jacob Eglar to Claude E. Spriggs on January 19, 1945, of Lots 7 and 8, Block 15, Collins Addition, Phoenix, Arizona.

"7. Sale by Claude E. Spriggs to Jesse Arreola on August 14, 1947, of Lots 7 and 8, Block 15, Collins Addition, Phoenix, Arizona.

"8. Sale by Katherine Moss Fisher to Claude E. Spriggs on September 22, 1947, of Lot 6, plus the south 4 feet of Lot 5, Eastwood Place, Phoenix, Arizona.

"9. Sale by Claude E. Spriggs to Howard M. and Ruth Van Denburgh on November 20, 1947, of Lot 6, plus the south 4 feet of Lot 5, Eastwood Place, Phoenix, Arizona.

"It is further stipulated that the Court and jury may consider the foregoing records in evidence the same as if the original records had [10] been introduced in evidence.

"This stipulation is made for the purpose of expediting the trial of the above-entitled cause and to avoid the necessity of introducing in evidence the original records covering the transfers above enumerated.

(Testimony of William McRae.)

“Dated this 8th day of November, 1951.

“Frank E. Flynn, United States Attorney,

“(Signed) E. R. Thurman, Assistant U. S. Attorney.

“(Signed) W. T. Choisser, Attorney for Defendant.”

Mr. Choisser: Your Honor please, I think it will also be stipulated by counsel that Evelyn Lee Spriggs signed this as regards to Item Number 4, on the first page, Mr. Thurman.

The Court: That sale by Evelyn Lee Spriggs and Claude E. Spriggs of a farm situated north of the Gila River?

Mr. Choisser: The sale by Eldon Palmer, if your Honor please, the one before, Number 3, the sale to Evelyn Lee Spriggs of that same farm.

The Court: Yes.

Mr. Choisser: What is meant by the stipulation is that this deed shows that the property was in the name of Evelyn Lee Spriggs as her sole [11] and separate property.

The Court: Well, it doesn't say that here.

Mr. Choisser: No, I say——

The Court (Interrupting): But that is understood; that is the stipulation, is it?

Mr. Thurman: Yes.

The Court: In other words, that the farm north of the Gila River in Graham County was acquired by Evelyn Lee Spriggs as her sole and separate property on May 18th, 1943?

(Testimony of William McRae.)

Mr. Choisser: And the deed so shows, the original deed.

The Court: And the deed so shows?

Mr. Choisser: Yes, your Honor.

The Court: And the sale of the property on September 11th, 1943, the deed was joined in by Claude E. Spriggs?

Mr. Choisser: Yes, the deed was joined in by him. That will be explained later.

The Court: All right.

Mr. Choisser: Also as to Items 8 and 9 on the following pages the same situation exists.

The Court: That is to say, as to Lot 4, Block 6, Townsite of Safford, Arizona, a deed from Marion Lee to Evelyn Lee Spriggs as her sole and separate property on December 24th, 1938, and [12] on January 7th, 1946——

Mr. Choisser (Interrupting): It was transferred by joint deed joined in by the defendant.

The Court: Well, it says: "Sale by Claude E. Spriggs."

Mr. Choisser: Well——

The Court: And Evelyn——

Mr. Choisser (Interrupting): Well, the word "sale" is a conclusion. The deed shows, and we will explain it, that that deed given by Marion Lee to Evelyn Lee Spriggs was her sole and separate property and it is joined in by Claude E. Spriggs. That is, the deeds will show this.

Mr. Thurman: I don't think there is any——

The Court (Interrupting): Do you so stipulate?

(Testimony of William McRae.)

Mr. Thurman: Yes, sir.

The Court: Very well, you may proceed.

Direct Examination

By Mr. Thurman:

Q. Please state your name?

A. William McRae.

Q. Where do you live? [13] A. Phoenix.

Q. How long have you lived here in Phoenix, Arizona? A. Oh, over 25 years.

Q. And during that 25 years what has been your business or occupation, Mr. McRae?

A. I have been with the Internal Revenue Service all of that time, or more than 18 years.

Q. Whereabout is that service?

A. Phoenix.

Q. Here in Phoenix, Arizona?

A. That is right.

Q. Just what are your duties and responsibilities at the present time with respect to your employment by the Government in the Internal Revenue Department?

The Court: Excuse me a moment. The State of Arizona is the Internal Revenue District?

The Witness: The entire State constitutes one district.

The Court: What district?

A. The District of Arizona.

Q. Does it have a number?

A. It does not have a number.

(Testimony of William McRae.)

Q. Just Internal Revenue, District of Arizona with headquarters at Phoenix? [14]

A. That is right.

The Court: Very well.

The Witness: What was the question?

(The last question propounded to the witness was read by the reporter.)

The Witness: Generally, it includes the supervision of the income tax division. Under the heading of that division I engage in processing and handling of the income tax returns.

The Court: Are you an Internal Revenue Agent or are you a Deputy Collector?

A. I am a Deputy Collector, head of the income tax division in the Collector's office.

The Court: Very well.

Mr. Thurman: Were you subpoenaed to bring certain records here today, Mr. McRae, from the office here in Phoenix? A. I was.

Q. And were you subpoenaed to bring the income tax records of the defendant Claude E. Spriggs for the years 1944, '46 and '47?

A. Yes.

Q. Did you bring them? A. I did.

Q. Have you them there?

A. I do have (presenting documents to Mr. [15] Thurman.)

Mr. Thurman: Please mark the purported income tax returns for 1944 as Government's Exhibit 1 for identification.

(Testimony of William McRae.)

(Whereupon the document was marked as Government's Exhibit 1 for identification.)

The Court: I take it that in view of the stipulation that was read to the jury, that it may also be stipulated that Claude E. Spriggs and Evelyn E. Spriggs are husband and wife?

Mr. Choisser: That is right.

The Court: And have been at all times since what date?

Mr. Choisser: Mentioned herein or in connection with this since 1944, or what is the actual date, Mr. Spriggs?

The Defendant: '28.

Mr. Choisser: Since 1928, if your Honor please.

The Court: '28?

Mr. Choisser: '28.

The Court: Very well, you stipulate to that?

Mr. Thurman: Oh, yes.

The Court: Very well.

Mr. Thurman: And would you mark the purported [16] income tax return of the defendant for 1946 as Government's Exhibit 2 for identification.

(Whereupon the document was marked as Government's Exhibit 2 for identification.)

Mr. Thurman: And mark the purported income tax return of the defendant for '47 Government's 3 for identification.

(Whereupon the document was marked as Government's Exhibit 3 for Identification.)

(Testimony of William McRae.)

The Court: Is there need to be further foundation, Mr. Choisser?

Mr. Thurman: I was going to shorten it by making the offer at this time.

The Court: Are you offering them in evidence?

Mr. Thurman: Yes, the offer is made, your Honor.

Mr. Choisser: Your Honor please, I think there are some other papers that are attached to these that probably are not a part of the original returns that were filed. I don't believe these are admissible.

Mr. Thurman: I will be glad to take them off the returns.

The Court: All right.

Mr. Thurman: Will you examine Government's 1 [17] for identification, and the other two (addressing Mr. Choisser).

Mr. Choisser: They may be admitted.

Mr. Thurman: Thank you.

The Court: In evidence as Exhibits 1, 2, and 3.

(Whereupon the documents were marked as Government's Exhibits 1, 2 and 3 in evidence.)

Mr. Thurman: Mr. McRae, will you look at these Government's Exhibits 1, 2 and 3 in evidence and I will ask you one question. I will ask you first whether you are familiar with these exhibits?

A. I am.

Q. Can you tell the Court and jury whether or not the defendant, in those exhibits, has shown re-

(Testimony of William McRae.)

receipt for the years for which those income tax returns stand for, any interest; does it show any receipt of any interest?

Mr. Choisser: Just a minute, we object to that. The exhibit is now in evidence. It shows for itself what it contains and what it does not contain. This would be merely the witness' opinion on that.

The Court: Let me see the exhibits.

Mr. Choisser: It speaks for itself, if your [18] Honor please, the exhibit does.

The Court: The objection is sustained.

Mr. Thurman: Please mark this purported—this Form 1099 as Government's Exhibit 4 for Identification.

(Whereupon the document was marked as Government's Exhibit 4 for Identification.)

Mr. Thurman: And this purported Declaration of Estimated Tax for the calendar year '44, as Government's Exhibit 5 for Identification.

(Whereupon the document was marked as Government's Exhibit 5 for Identification.)

Mr. Thurman: Mr. McRae, I hand you Government's Exhibit Number 4 for Identification and ask you to examine that and state whether or not you can identify it?

A. I can identify it, yes.

Q. Where did that come from, do you know?

A. Information Return. This is an Information Return Form 1099 covering the payment or—

(Testimony of William McRae.)

Mr. Choisser (Interrupting): Just a minute, if your Honor please, may we see the exhibit?

The Court: I think so.

Mr. Thurman: I did not mean for the witness to go quite so far. [19]

The Court: Well, let him look at it and save time.

Mr. Thurman: While you are looking at that I will ask him a question about this.

The Court: Well, he will want to see that one.

Mr. Choisser: Well, if your Honor please, we will object to this as not binding on the defendant.

The Court: Yes.

Mr. Choisser: Government's Exhibit Number 4, we will object to it because it is immaterial, is not signed by the defendant and has no relation to the defendant except what somebody else said.

Mr. Thurman: That may be true, but that is not the reason I am examining the witness.

The Court: I am afraid the objection is good.

Mr. Thurman: The objection is perfectly good, your Honor, but I wanted to ask him one question. That exhibit that the Court holds in his hand—

The Court (Interrupting): Why don't counsel come to the bench and you can tell me the purpose of this without the presence of the jury.

(Whereupon counsel for both sides conferred with [20] the Court at the bench in a conversation inaudible to the jury, as follows:)

Mr. Thurman: I merely want to show that this

(Testimony of William McRae.)

is attached, these are the papers we removed from the income tax return in '44. I just want to show it was attached to it.

Mr. Choisser: When the defendant filed it?

Mr. Thurman: No, today, just now, it was removed from them, also I can identify it—can be all tied together when I put on Sasser.

Mr. Choisser: We can't be bound by what you believe.

Mr. Thurman: I am not asking him, just that he took it off of there.

The Court: It wouldn't make any difference.

Mr. Thurman: All right.

(The following proceedings continued within the hearing of the jury.)

Mr. Thurman: I offer Government's Exhibit 5 in evidence.

The Court: Five?

Mr. Thurman: Five, I offer that in evidence.

The Court: Wasn't that 4 we were looking at?

Mr. Choisser: Four we were talking about. [21]

The Court: Oh, you don't offer 4?

Mr. Thurman: No, I will withdraw that, I can tie that up later. I don't need it now. I don't offer 4.

Mr. Choisser: There is no objection to Number—Government's Exhibit Number 5 for Identification being marked in evidence.

The Court: Five is in evidence.

(Testimony of William McRae.)

(Whereupon the document was marked as Government's Exhibit 5 in evidence.)

Mr. Thurman: And, Mr. McRae, this is one of the papers you removed from the income tax return in evidence——

Mr. Choisser (Interrupting): Just a moment, if your Honor please, we object to counsel leading the witness. That was just what the conversation just ensued was.

The Court: The objection is sustained.

Mr. Thurman: That is all, you may cross-examine.

The Court: Cross-examine.

Cross-Examination

By Mr. Choisser:

Q. Mr. McRae, how long have you known the defendant Claude E. Spriggs? [22]

A. Oh, since he was a small boy, 30 years, I guess.

Q. And were you in the office of the Collector of Internal Revenue when the exhibits that have been introduced in evidence were first filed?

A. Yes.

Q. And how long prior to that time?

A. I have been there since 1933.

Q. You have had numerous conversations with Mr. Spriggs during the time of the filing of these income tax returns and since then, have you not?

A. I have had some conversations, yes.

(Testimony of William McRae.)

Q. A number of times?

A. Well, several times.

Q. And concerning the amount, or, if any, of the income tax due concerning these exhibits?

A. My conversations did not relate——

Mr. Thurman (Interrupting): I object to the cross-examination, no foundation for it. I went into no conversation between this witness and the defendant, your Honor.

The Court: Sustained.

Mr. Choisser: That is all.

The Court: The witness is excused. Next witness. [23]

Mr. Choisser: May it please the Court, the witness may be excused but subject to being recalled if we do need at times.

The Court: He will be available.

Mr. Choisser: He will be available.

The Court: All right, you will come by telephone call.

Mr. Thurman: That may also apply to the Government because we may need him back and forth.

The Court: Either side, yes.

Mr. Thurman: All the witnesses we put on we may have to do that.

The Court: All right. [24]

* * *

ARTHUR R. BEALS

was called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Thurman:

Q. Please state your name?

A. Arthur Beals—Arthur R. Beals. [91]

Q. Where do you live?

A. At present I am living in Mesa.

Q. In Arizona, here?

A. Yes, sir; Mesa, Arizona.

Q. Have you ever held any official position with the Federal Government of the United States?

A. Yes, sir.

Q. And what was it?

A. Deputy Collector Internal Revenue, Arizona District.

Q. How long were you here, Mr. Beals?

A. I was in that capacity for approximately nine and one-half years, including two years that I served in the Army.

Q. Then what were your duties as such officer?

A. As a Deputy Collector it was my duty to investigate tax matters and at times assist in the preparation of returns, but—now, the majority of my work consisted of investigation of verification of returns that had been filed and made record in the District Office.

Q. I see. Now, when did you leave the services, if you did, of the Federal Government?

(Testimony of Arthur R. Beals.)

A. I left the service as of September 7th of this year. [92]

Q. What employment have you now?

A. I am now employed as Assistant Professor of Accounting at the Arizona State College at Tempe.

Q. Did you have occasion at the time that you were an investigator for the income tax division of the Internal Revenue to work on this case now before the Court?

A. I did.

Q. Now, limiting your testimony to the Stuart M. Bailey deal, are you familiar with that?

A. Yes. I would have to refer to my——

Q. (Interrupting): Are you familiar with it, you know what I am talking about?

A. Yes, sir.

Mr. Thurman: Please mark these two sheets of paper purported to be a transcript from the books of "C. E. S." as a Government's Exhibit.

The Court: Fifteen.

(Whereupon the document was marked as Government's Exhibit 15 for Identification.)

Mr. Thurman: Did you investigate, Mr. Beals, the sale by Claude E. Spriggs, the defendant, of the property to Mr. Stuart Bailey?

A. Yes, sir. [93]

Q. And just what sort of an investigation did you make with respect to that particular matter?

A. As to the—as to that particular piece of property, of course, I was concerned with the——

The Court: No.

(Testimony of Arthur R. Beals.)

Mr. Thurman: Not what you were concerned with, what did you do?

The Court: What did you do?

A. I reviewed what records were supplied to me by Mr. Spriggs and from that compiled all the information that I could find relative to this particular piece of property.

Mr. Thurman: And what were you attempting to learn from that particular investigation?

A. The cost of the property—as regards that piece of property I was concerned about the cost and the selling price.

Q. The cost to whom?

A. The cost to Mr. Spriggs and the amount that he received in the sale of that property.

Q. Now, do you know—did he furnish you with this data, the books? A. Yes, sir.

Q. Do you know where those books are [94] now? A. I do not.

Q. You don't know whether the Government has them or where they are?

The Court: Where did you last see them?

A. I returned them to Mr. Spriggs.

Mr. Thurman: As far as you know, he has the books?

A. So far as I know, he still has them, but I do not even know if they exist.

Q. What did you do; did you make any record at all of the investigation?

A. Yes, sir. As to that particular transaction I

(Testimony of Arthur R. Beals.)

—that particular piece of property I believe I found a transcript.

Q. Not what you found, what did you do?

A. I made a transcript of an account in Mr.— that I found in Mr. Spriggs' books.

Q. I am going to hand you Government's Exhibit 15 for Identification, and I am going to ask you if this is the transcript that you mentioned?

A. Yes, sir; it is.

Q. Now, from an investigation and perusal that you made of the records furnished you by Mr. Spriggs, were you able to determine, Mr. Beals, the cost of that particular piece of [95] property to him?

A. Yes, sir; as reflected by his books.

Q. And what did you find that amount to be?

Mr. Choisser: Just a minute, if your Honor please, we will object to that as being irrelevant and immaterial and incompetent at this time, no proper foundation laid.

The Court: Sustained, no foundation laid. Did you ever show that transcript that you have in your hand there to Mr. Spriggs afterwards?

A. I cannot say that I did not. We were together on different occasions and discussed this particular piece of property, the cost and the source of the figures.

Q. Did you show him that document or have any discussion with him? A. Yes.

Q. When you had the document before you?

A. Yes, sir.

(Testimony of Arthur R. Beals.)

Q. You showed him the document?

A. Yes, I am sure he saw this document, I am sure he saw this document.

Q. Are you guessing now, or do you recall the particular occasion?

A. Yes, I recall the particular occasion.

The Court: All right. [96]

Mr. Thurman: When was it?

A. It was at a conference at the Office of the Collector of Internal Revenue, and I believe it was in September of '48.

Q. And who was present at that time?

A. Mr. Tucker of the Intelligence Unit.

Q. This gentleman here (indicating Mr. Tucker)?

A. Yes, sir; and Mr. Spriggs and myself.

Q. And was anything mentioned as to the respective items disclosed in the sheet?

A. Yes, sir.

Q. And were you able to determine—did you determine the amount that the property cost Mr. Spriggs?

Mr. Choisser: Just a minute, your Honor please, we still renew the same objection heretofore made.

The Court: Objection is sustained, no foundation laid.

Mr. Thurman: That is all for the present on that.

The Court: I think we might have the afternoon recess. The reporter's hand gets tired and that is as good an excuse as anything.

(Testimony of Arthur R. Beals.)

(Whereupon a short recess was had.) [97]

(After recess, all parties as heretofore noted by the Clerk's record being present, the trial resumed as follows):

The Court: The record may show the defendant is present in person by counsel and the jury is in their respective places.

Mr. Thurman: Your Honor, I am forced to put this witness back on for some further remarks. I found some other papers I overlooked.

The Court: All right.

Mr. Thurman: I thank you, your Honor.

ARTHUR R. BEALS

a witness on behalf of the Government, resumed the witness stand and testified further as follows:

Direct Examination

(Resumed)

By Mr. Thurman:

Q. Now, referring to Government's Exhibit 15 for Identification, you testified that you did discuss this with Mr. Spriggs? A. Yes, sir.

Q. And about when was that?

A. I was mistaken as to the date in my first answer to the question. It was at a later [98] date and the defendant has signed a note——

The Court (Interrupting): Wait, now, the conversation.

(Testimony of Arthur R. Beals.)

Mr. Thurman: Never mind. About when was it, as near as you can tell.

A. It was prior to January 29th of '49.

Q. What period of time was it that you made this compilation here, which is Government's Exhibit 15 for Identification, do you remember when you made it, about?

A. I think it was in September that I made the transcript referred to.

Q. All right. Now, subsequent to the time that you claim you showed that to Mr. Spriggs, did you meet again with Mr. Spriggs with respect to this matter? A. Yes.

Q. When was that? A. January 29th.

Q. January 29th of what year? A. '49.

Q. And was the sale of the Stuart M. Bailey property discussed at that time?

A. Yes, it was.

Q. And was any statement prepared and presented to Mr. Spriggs at that time? [99]

A. Yes, sir.

Mr. Thurman: Please mark this paper here dated December 31st, 1942, as a Government's Exhibit.

(Whereupon the document was marked as Government's Exhibit 16 for Identification.)

Mr. Thurman: I hand you Government's Exhibit 16 for Identification and ask you to examine it.

Mr. Choisser: May I ask a question on voir dire, if your Honor please?

(Testimony of Arthur R. Beals.)

The Court: Yes.

Mr. Choisser: Do I understand now, Mr. Beals, that the conversation which you relate, and you said you showed Exhibit 15 to Mr. Spriggs on or about September, 1948, it did not take place, you say you were in error on that date?

A. I saw Mr. Spriggs during that period of time.

Q. But you didn't show him this exhibit as you testified to at that time?

A. I cannot say definitely that I did, but I can say definitely that he—that we discussed this particular transcript.

Q. No, that was not what I asked you. Did you show him that in September, '48, or did you [100] not?

A. I can't state definitely that I did.

Q. But you do testify now that you did discuss it and showed it to him in January, '49, is that what I understand?

A. Yes, sir.

Mr. Choisser: That is right.

Mr. Thurman: I forgot the last question.

(Whereupon the last question propounded to the witness was read by the reporter.)

Mr. Thurman: See if you can identify that or not?

A. Yes, sir; I do.

Q. And what is the date of it?

A. Dated the 24th day of January, 1949.

Q. And at that time what took place? Never

(Testimony of Arthur R. Beals.)

mind telling us about that thing, but just tell us what took place between you and Mr. Spriggs and whoever else was there?

A. Do I have to limit it to this transaction?

Q. Yes, that is right, that is right.

The Court: That is, to the sale of the Bailey property?

Mr. Thurman: That is right, try and limit it to that.

The Court: Did you have a conversation [101] with him on this date concerning the Bailey property?

A. Yes, sir.

Q. Who was present?

A. Mr. Tucker, Mr. Spriggs and myself.

Q. Did you tell Mr. Spriggs that he need not answer any questions in the event he thought they might incriminate him?

A. I don't recall informing him of his—of that matter at that particular time. May I state further, he did not—

The Court (Interrupting): Had you previously informed him of his Constitutional rights?

A. Yes, sir.

Q. When?

A. That was on my first visit to—my first conversation with Mr. Spriggs, when I saw him at his home.

Q. You identified yourself at that time as an Internal Revenue agent?

A. Yes, sir.

Q. A Deputy Collector?

A. Yes, sir.

The Court: Very well.

(Testimony of Arthur R. Beals.)

Mr. Choisser: May I ask a question?

The Court: Yes.

Mr. Choisser: Was the Bailey property [102] discussed at that time?

A. No, sir.

The Court: When you saw him at his home the first time, did you tell him that you were investigating his return for the year '44?

A. I was investigating—

Q. (Interrupting): No, what you told him, not what you were investigating.

A. Yes, sir; I told him I was investigating several years, including '44.

Q. All right.

A. Could I give his answer to my statement when I informed him of his rights?

The Court: I am not interested, I don't know whether counsel is.

Mr. Thurman: What did he say at that time?

A. Referring to the time I saw him at his home, is that right?

Q. At the time you were talking about what the Court asked you about, what did he say?

A. Well, I told him that his income tax returns were under investigation and I informed him that he had Constitutional rights and I asked him if he wanted me to explain them to him and he said, "No, I am an attorney, I understand all of that." [103]

Q. Then from that time on you had other meetings with him, is that correct?

A. Yes, sir; that is correct.

(Testimony of Arthur R. Beals.)

Q. You didn't reiterate it every time you met him? A. No, I felt it unnecessary.

Q. Now, you testified who was there at the time this was signed? A. Yes, sir.

Q. Was this explained, this document here which is Government's Exhibit 15 for Identification, been explained to Mr. Spriggs? A. Yes.

The Court: It had been explained to him?

A. Oh, yes.

Mr. Thurman: And he signed it, did he?

A. Yes, sir; he did.

Mr. Thurman: I offer it.

The Witness: Signed it under oath.

Mr. Choisser: I object to it, if your Honor please, as being entirely irrelevant, incompetent and immaterial. It is a statement of something, a balance sheet as of December 31st, '42, and has no relevancy to the matter in question on the sale of the Stuart Bailey premises. It does not purport to show the cost price, the sale price or [104] any other matter concerned with the bill of particulars.

The Court: Well, if it does, I can't tell it from this document.

Mr. Thurman: I think I can help the Court and jury here if I can just get the document a second.

The Court: All right, here you are (handing document to Mr. Thurman).

Mr. Thurman: How was the Stuart M. Bailey transaction set forth in here, can you tell the Court?

Mr. Choisser: We will object to that, the exhibit shows for itself.

(Testimony of Arthur R. Beals.)

Mr. Thurman: It could be just a number or something, I think that it could be explained.

The Court: I think that you can—the objection is sustained. I am not going to tell you why.

Mr. Thurman: That is all right, I am not asking you. Is the Stuart M. Bailey deal set forth in this particular exhibit, being Government's Exhibit Number 16?

Mr. Choisser: The same objection, if your Honor please.

The Court: It calls for a conclusion of the [105] witness. The objection is sustained.

Mr. Thurman: Who prepared this statement?

A. I did, sir.

Q. And the statement with respect to the Stuart M. Bailey matter—

Mr. Choisser: Just a minute, if your Honor please, the same objection. Counsel is leading the witness and now he is attempting to put in the question—

The Court (Interrupting): No, he said, "Who prepared it."

Mr. Choisser: No.

The Court: And the witness said he prepared it and that question and answer is proper and counsel has not finished his next question.

Mr. Thurman: And is the Stuart M. Bailey property, did you set it forth on this instrument which is Government's Exhibit 16 for Identification?

Mr. Choisser: Just a minute. May we still

(Testimony of Arthur R. Beals.)

interpose the same objection to the same question?

The Court: The objection is sustained.

Mr. Thurman: And was this exhibit, being Government's Exhibit Number 16 for Identification, with the figures on that and the descriptions here taken from Government's Exhibit Number 15 [106] for Identification?

A. The Government's Exhibit 15 there supports this statement——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, we object to that as calling for a conclusion of the witness and not responsive and I request that the answer be stricken.

The Court: The answer may be stricken and the jury instructed to disregard it.

Mr. Thurman: In other words, you made up this Government's——

The Court (Interrupting): Now, you are leading the witness and counsel objected on that ground, so you might just as well stop it now.

Mr. Thurman: From what did you prepare this Government's Exhibit 16?

Mr. Choisser: If your Honor please, we will object to this as having been asked and answered; already been gone into by counsel.

Mr. Thurman: You objected to it.

The Court: Overruled.

(The question was read by the reporter.)

The Witness: I prepared it from all the information available, but as to that——

(Testimony of Arthur R. Beals.)

The Court (Interrupting): No. [107]

Mr. Choisser: No.

The Court: When you start out putting "but" in it, then you start arguing.

The Witness: As to that piece of property——

The Court: No.

Mr. Choisser: Just a minute, we submit that the question has been asked and answered.

The Court: Well, he has prepared it from all the information available. I don't know what he means, "All the information available."

The Witness: May I state further on that?

The Court: Well, not if you are going to start an explanation or argue concerning that particular piece of property. The question called for the material that you used to prepare that, what information was available?

A. An account from the records of Mr. Spriggs.

Q. That you made?

A. I transcribed.

Q. Did you show it to him? A. Yes, sir.

Mr. Thurman: And this Exhibit Number 16, did he concur in the amounts set forth in there with respect to the Stuart M. Bailey property?

Mr. Choisser: I object to that, if your [108] Honor please, calling for a conclusion of the witness.

The Court: Objection sustained. There is no evidence in the record that Exhibit 16 has anything to do with the Stuart M. Bailey property.

(Testimony of Arthur R. Beals.)

Mr. Thurman: Well, I was not permitted to explain one of the sentences in here.

The Court: You haven't asked him the right question yet.

Mr. Thurman: How do you designate—by what manner or means, how do you describe this property, this Bailey property?

The Court: It assumes a fact not in evidence, or is it described there?

Mr. Thurman: It is described.

The Court: Counsel will testify?

Mr. Thurman: No, I don't want to testify. I don't know how I can ask him the question any different than I have, your Honor.

The Court: Well, they are all objectionable up to now.

Mr. Thurman: Read the last question.

The Court: I am sorry, counsel, all I can do is call the shots as they come.

Mr. Thurman: Your Honor, that is what [109] I understood. Read the last question.

(Thereupon the last question was read by the reporter.)

The Court: In Exhibit 16.

Mr. Thurman: In Exhibit 16 for Identification.

Mr. Choisser: I object to that, if your Honor please.

The Court: On what ground?

Mr. Choisser: Assuming facts not in evidence.

(Testimony of Arthur R. Beals.)

There is nothing in there to indicate that whatsoever.

The Court: Sustained.

Mr. Thurman: What do you have reference to by "1029 Fifth Avenue," what does that relate to?

Mr. Choisser: I object to that as calling for a conclusion of the witness.

The Court: May I see the document?

Mr. Thurman: The document he made up himself (handing the document to the Court).

The Court: Oh, that objection is sustained—oh, wait a minute—the objection is sustained. There is no foundation laid.

Mr. Thurman: Was that item with respect to the Stuart M. Bailey property discussed with [110] the defendant prior to the time that he signed this exhibit?

Mr. Choisser: Just a minute, if your Honor please, we will object to that as something not in evidence. There is no item in there that the Stuart M. Bailey property is in there.

The Court: It says "1029 Fifth Avenue house." Let me hear the last question.

(The last question propounded to the witness was read by the reporter.)

The Court: The objection is sustained.

Mr. Thurman: Did you ever discuss with this defendant Mr. Spriggs this property designated as 1029 Fifth Avenue? A. Yes.

Mr. Choisser: I object to it as being immaterial, if your Honor please.

(Testimony of Arthur R. Beals.)

The Court: Overruled.

The Witness: Yes.

The Court: When?

A. Prior to the signing of this statement here on January 24th.

Mr. Thurman: And was the amount set forth there as the cost of the property to Mr. Spriggs discussed with him? A. Yes. [111]

Q. And did he approve the figure?

Mr. Choisser: Just a minute, if your Honor please, that question is objectionable, calling for a conclusion of the witness. The exhibit states for itself what it is. Let's have what was said or done with the exhibit.

The Court: Well, that is a good way to prove it, to find out what was said. Up to now you have been just asking what has been in this witness' mind. You can't tie that onto the defendant.

Mr. Thurman: No, I don't mean to try to, your Honor. What was said at that time and place concerning this Stuart M. Bailey property?

The Court: That is the same objection counsel has been making to that question repeatedly. Was anything said concerning the property described here as 1029 Fifth Avenue?

A. Yes, sir.

Q. What was said by you to the defendant and the defendant to you?

A. This piece of property came under discussion—

Mr. Choisser (Interrupting): Just a minute,

(Testimony of Arthur R. Beals.)

if your Honor, we will submit that is not responsive. [112]

The Court: That is not responsive.

Mr. Choisser: I ask that it be stricken.

The Court: What was said about this 1029 Fifth Avenue property at the time he signed this statement on January 24th, '48?

A. May I see the statement?

The Court: Surely (handing document to the witness).

A. As of December 31st, '42, the depreciated basis——

The Court (Interrupting): No, who said this?

A. I said it, I did.

Q. You said it to him?

A. I stated the depreciated basis as of December 31st, '42.

Q. To whom?

A. In his presence, to him, yes, sir; to him, this piece of property at 1029 Fifth Avenue, one and the same piece of property as was sold to——

Mr. Choisser (Interrupting): Just a minute, we submit, your Honor, that that is not responsive. He said some words were said and then he explained that is the same property. I know he didn't say that to Mr. Spriggs. We object to [113] it as not being responsive.

The Court: Mr. Witness, what you are allowed to testify to now is what you said to him and what he said to you.

A. All right.

(Testimony of Arthur R. Beals.)

The Court: Not something else.

Mr. Thurman: In substance.

The Court: Well, in substance, the best you can remember.

A. In substance.

The Court: None as here now know that 1029 Fifth Avenue, we don't know where it is or what it is.

A. I think I can——

Q. (Interrupting): And there isn't any evidence in the record to show from Mr. Bailey's testimony that the property there had any street address or anything, so we don't know what it is.

A. In substance, Mr. Spriggs identified the property sold——

Mr. Choisser: We will object to that, if your Honor please. He is still relating a version if it, not what was said and done. We object to it for that reason.

The Court: Yes, that is right. What he said. Can't you say, "Well he said to me" and, [114] "I said to him," and "He said to me," and "I said to him"?

A. I asked Mr. Spriggs the address of the property sold to Stuart M. Bailey to which he replied that it was 1029 Fifth Avenue, Safford, Arizona.

Mr. Thruman: Then after that was said, what else took place, what was the next thing that was said, in substance, at that time and place?

A. He replied that that was one and the same piece of property.

(Testimony of Arthur R. Beals.)

Q. All right.

A. And then the question as to his cost of that particular piece of property.

Q. That was discussed at that time?

A. It was discussed at that time.

Q. What did you say to him about this cost and what did he say to you at that time and place?

A. I asked him if there were any costs to this property other than were shown in this document which I earlier referred to as the 1029 Fifth Avenue property, if there were any additional costs, and to which he replied they were all in that reflected in that account.

Q. Are you referring to Government's 15 for Identification now? [115]

A. Yes, sir; I am; yes, sir; I am.

The Court: You had that before you at the time? A. Yes.

Q. And did he? A. Yes, sir.

Q. Did he examine it? A. Yes, sir.

Q. Go ahead, what was said, now?

A. Then the matter of the depreciated basis on this particular piece of property as of December 31st, '42, was discussed, and I had prepared a statement—

Mr. Choisser (Interrupting): Just a minute, if your Honor please, we are far afield now from the instructions of the Court. We would like to know what was said and done, not what the witness—

The Court (Interrupting): When you asked him how much it cost, what did he say?

(Testimony of Arthur R. Beals.)

A. He agreed to the——

Mr. Choisser (Interrupting): Just a minute.

The Court: What did he say; did he say something?

A. He agreed to the figures that I had set [116] forth in this document.

The Court: Which document?

Mr. Choisser: I ask that that be stricken and the jury instructed to disregard.

The Court: Right, those figures are right——

A. (Interrupting): He said he had nothing more to add to these figures as to the cost.

Q. What figures do you have on this document right there?

A. Two thousand——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, I submit that that is not responsive. We are still far afield from what your Honor asked, even.

The Court: Well, in the meantime, counsel for the Government has handed the witness another document from which he appears to be reading, and when he said he had nothing to add to that cost, what was he referring to?

The Witness: He was referring to this cost as indicated in this document.

The Court: Fifteen?

A. Document 15, setting forth the cost of 1029 Fifth Avenue property as \$2,063.30 as the original cost. Now, that——

Mr. Choisser (Interrupting): Just a [117] min-

(Testimony of Arthur R. Beals.)

ute, if your Honor please, that is not responsive to the question.

The Court: Yes, yes.

Mr. Choisser: May I have that last figure Mr. Reporter.

The Reporter: \$2,063.30.

Mr. Thurman: I offer in evidence Government's Exhibit 15 for Identification and Government's Exhibit 16 for Identification.

The Court: Limited to that one item?

Mr. Thurman: Yes, your Honor.

Mr. Choisser: I object to that, if your Honor please, first, as to Exhibit 16, which is as of '42, two years before the sale of the property which makes it irrelevant, incompetent and immaterial. The property is not described as any particular property and I don't know where the particular property is, in what State or what County. It is two years before it was sold, by the Government's bill of particulars. We submit it is highly irrelevant, incompetent and immaterial, this worksheet as of '42—supposedly—

The Court (Interrupting): Let me see that document.

Mr. Choisser: (Handing document to the Court) This, if your Honor please, has no [118] date on it whatsoever.

The Court: Well, I think that as far as the two documents are concerned, counsel, that they go far afield. The particular item involved here which you are attempting to prove at this time, to wit: the

(Testimony of Arthur R. Beals.)

cost to the defendant of the property in Safford, Arizona, sold to Bailey, and the amount of the sale, I do not believe that I can, in justice or fairness to the defendant, permit this document in evidence because there are so many other things in that, that that would be confusing and might tend to prejudice or cause the defendant wrongfully—

Mr. Thurman (Interrupting): You can hold that decision in abeyance until the end of the case, because there are other items in there I will have to put in.

The Court: Very well. All right, the objection will be sustained at this time.

Mr. Thurman: That is all at this time from this witness.

The Court: Cross-examine.

Mr. Choisser: No cross-examination at this time.

The Court: The witness is excused. You live in Mesa? [119]

The Witness: Yes, sir.

The Court: Could he be permanently excused?

Mr. Thurman: Oh, no, he will have to be here all through this trial. We will have to spot him in wherever we can. The foundation has not been laid for a lot of his testimony, your Honor.

The Court: All right.

Mr. Thurman: A lot of it.

The Court: All right this witness is not excused. All right. [120]

JAMES A. STRUCKMEYER

was called as a witness on behalf of the Government and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Thurman:

Q. Please state your name.

A. James A. Struckmeyer.

Q. Mr. Struckmeyer, where do you live?

A. 1516 East Almeria in Phoenix.

Q. What is your profession—you are a lawyer here?

A. Lawyer.

Q. And you are acquainted with the defendant, are you, Mr. Spriggs?

A. Yes.

Q. At any time was he ever associated in your law offices or that of your father's, Judge Struckmeyer's office?

A. Yes. [185]

Q. And about what period of time was that?

A. I believe it was in the fall of '43 until some-time in '45 or '6.

Q. Practically a span of three years?

A. Two or three years, yes.

Q. And during that period of time you associated with him frequently, did you not?

A. Yes, professionally and socially.

Q. And did you ever have any conversation during that period of time with this defendant with respect to the payment of income tax returns or income taxes to the Federal Government?

A. Yes, I did.

Q. And can you tell us about when the conversations took place, if there were more than one?

(Testimony of James A. Struckmeyer.)

A. I would say there were several. Mr. Spriggs and I went out together. There were several in the office. I'd say about six to a dozen times.

Q. And practically over what period of time?

A. During the period of time that he was in our office and, perhaps, for three or four months after that.

Q. And can you tell us at this time in substance what the conversation was, what it [186] consisted of?

Mr. Choisser: Your Honor, please, we will object to that as being irrelevant, incompetent, and immaterial. There is no materiality of these conversations shown, don't know what it purports to be, what it purports to prove; no proper foundation laid for this.

The Court: Will counsel approach the bench?

(Whereupon Court and counsel confer at the bench outside of the hearing of the jury, as follows:)

The Court: What do you expect to prove?

Mr. Thurman: I expect to prove assertions made by the defendant to Mr. Struckmeyer that anybody would be a damned fool to pay income tax returns, in substance, and just to show intent, the modus operandi.

Mr. Choisser: The proper foundation has not been laid, does not show whether it is his income tax generally, specifically or any other reason; does not show it was ever carried out; does not tend to

(Testimony of James A. Struckmeyer.)

prove or disprove anything in this indictment, if your Honor please.

The Court: Of course, one of the essential elements of the indictment is wilfulness, which must be proved separately. [187]

Mr. Choisser: There is no proper foundation laid in this or any support of the main allegations of the indictment to show that he did do it.

Mr. Thurman: We have it in the record—

The Court (Interrupting): I think it is admissible.

Mr. Choisser: One or two items in here they allege that certain income was due and they haven't met all of that. If he didn't owe anything, this conversation would not be material if, in truth and in fact, he didn't owe anything.

The Court: I know, you don't have to prove first whether or not he did and then prove the other. In other words, you don't have to either prove it that way or decide it that way.

Mr. Choisser: If he owed income tax, maybe the man wasn't working and didn't have it.

The Court: Well, I said yesterday what the Supreme Court said. The objection is overruled.

(The following proceedings resumed within the hearing of the jury:)

Mr. Thurman: Please read the last question.

(Whereupon the last question propounded to the witness was read by the reporter.)

(Testimony of James A. Struckmeyer.)

The Witness: Generally——

Mr. Choisser (Interrupting): Now, if your [188] Honor please, just a minute; it is not responsive to the question. The question was, what was said?

Mr. Thurman: In substance.

The Court: Yes. I don't know, maybe they said "Generally." Go ahead.

A. The conversation concerned my payment of an income tax and Mr. Spriggs' payment of an income tax. That was the substance of that without repeating the exact conversations. The substance was that I was silly for paying an income tax myself, that Mr. Spriggs did not pay an income tax and that there was no reason I should pay an income tax if I handled my affairs or my returns correctly. I can locate two of the conversations. One occurred in the office that I remember of in the presence of Mrs. Ross, our secretary; another in the presence of Mr. Harold Whitney, a lawyer here on the street, and I believe once at the New Yorker Cafe.

Mr. Thurman: Was anything else said in substance concerning that subject, Mr. Struckmeyer, that you remember of?

A. No, I'd say the substance of all those conversations was that I was a damned fool to pay a tax and that Mr. Spriggs didn't pay a tax [189] and there was no reason I should, as I say.

Mr. Thurman: You may cross-examine.

(Testimony of James A. Struckmeyer.)

Cross-Examination

By Mr. Choisser:

Q. Was that from a comparison of your relative incomes, Mr. Struckmeyer, do you know?

A. No, it was not so far as I know. I don't know what was in Mr. Spriggs' mind as to that. We were—I think our incomes were about equal then, perhaps I was making a little bit more than he was.

Q. And it concerned the correct method of making a return?

A. The general import, Mr. Choisser, was, that if you did it right you didn't have to pay any income tax.

Q. The conversation was that no matter what your income was, that that would still hold true?

A. That was about the gist of it; yes, sir.

Q. Or, no matter what you made, he told you that no matter what you made, if your report in a certain way was correctly handled, he said there would be no tax due?

A. No, he didn't go that far. As stated, it [190] was mostly confined to me. One time when I was present he made the same statement to Mr. Whitney. Now, I don't know whether he limited it to income groups or not.

Q. It concerned your method of figuring your return?

A. The method of reporting the return, sir.

Q. Yes, the method of reporting the returns?

A. Yes, sir.

Mr. Choisser: That is all.

Mr. Thurman: That is all; thank you, Mr. Struckmeyer.

(The witness was excused.)

Mr. Thurman: Mrs. Ross.

MARJORIE ROSS

was called as a witness on behalf of the Government and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Thurman:

Q. Please state your name.

A. Marjorie Ross.

Q. Miss or Mrs.? A. Mrs. [191]

Q. And you live here in Phoenix, Arizona?

A. Yes, I do.

Q. And what has been your profession or business in the last several years?

A. I have been employed by Struckmeyer and Struckmeyer.

Q. In what capacity? A. Stenographer.

Q. How long were you employed as clerk for Struckmeyer and Struckmeyer here in Phoenix?

A. Commencing in '44, September of '44.

Q. And you are still employed there?

A. Yes, I am.

Q. And during this period of employment did you become acquainted with the defendant in this case, Mr. Spriggs?

(Testimony of Marjorie Ross.)

A. Yes, he was an associate in the office.

Q. He was an associate in the office?

A. Yes.

Q. You did work for him, did you, the same as you did for other lawyers?

A. Yes, I did.

Q. And were you ever present during that period of time—what period of time was he there?

A. I believe Mr. Spriggs was there when I commenced work, and he left, I believe, the last [192] of '45 or the early part of '46.

Q. During that period of time were you ever present when Mr. Spriggs was discussing with Mr. James Struckmeyer the payment of income taxes to the Federal Government?

A. Yes, I have heard Mr. Spriggs discuss the matter.

Q. On those occasions who were present, if you can remember?

A. I can't remember exactly who all might have been there, Mr. Thurman, but Mr. Struckmeyer was there and I was there, I know that at times there have been other people there, but who they were I couldn't say exactly.

Q. And where did these conversations take place? A. In the office.

Q. In the office. Can you tell the Court and jury in substance what those conversations were between the parties there?

A. Well, in discussing income tax, the remarks were made about the payment of income tax, that

(Testimony of Marjorie Ross.)

they could not be paid or did not have to be paid if you made your income tax return in the correct manner, that Mr. Spriggs knew how to make his income tax rerturn or bocks up so he [193] didn't have to pay it.

The Court: Do you make income tax returns?

A. Yes, sir; I do.

Q. Do you try to take the deductions?

A. Me?

Q. Yes.

A. I don't make my own tax returns.

Q. But you do take deductions?

A. I presume I do.

Q. You do everything you can to reduce your tax?

A. I don't have anything to do with my own tax at all.

Q. Oh, you don't? A. No, I don't.

Q. Who makes these?

A. I have them made by a man that prepares the tax returns.

Mr. Thurman: I have no further questions.

Cross-Examination

By Mr. Choisser:

Q. Mrs. Ross, this conversation concerning income tax, did it relate to salaries or to the operation of real estate or stocks and bonds, or what? [194]

A. I presume it related to everything.

The Court: The answer may be stricken.

(Testimony of Marjorie Ross.)

Mr. Choisser: The different classes of returns was not discussed?

A. I don't know whether it was discussed.

Q. I mean, in your presence, did you hear it?

A. I don't understand what you mean.

Q. In other words, the income tax returns that you are talking about and Mr. Spriggs was talking about, did it concern salaries or the operation of real estate, or what?

A. I thought that it concerned everything.

The Court: It was just a general discussion, is that it?

A. Yes.

Mr. Choisser: He said that if you made it properly you may not have to pay income tax?

A. What was that?

Q. I say, you say he made the statement that if they were made properly you may not have to pay income tax?

A. Not exactly that way, Mr. Choisser, no.

Q. How did he say it?

A. To the best of my knowledge, as I can remember, the implication was—— [195]

The Court: No.

Mr. Choisser: No, not what the implication was.

The Court: You have been around a law office too long.

A. Well, maybe that is why I am frightened.

Mr. Choisser: Well, in other words, there was nothing said as to whether it was real estate, salaries or income from stocks and bonds or what,

(Testimony of Marjorie Ross.)

was there; no conversation concerning those items?

A. Yes, it concerned everything, Mr. Choisser.

Q. Did it concern stocks and bonds?

The Court: Did he mention stocks and bonds?

A. No, not that I recall.

Q. Did he mention if you invested your money in oil wells you can take a depletion allowance of 27½ per cent?

A. He said he knew how to take care of those things, yes.

Mr. Choisser: That is all.

Mr. Thurman: That is all.

(The witness was excused.)

Mr. Thurman: May we have the morning recess now, your Honor?

The Court: All right. We will have the [196] morning recess and remember the admonition.

(A short recess was thereupon taken.)

After recess, all parties as heretofore noted by the Clerk's record being present, the trial resumed as follows: [197]

* * *

ARTHUR R. BEALS

was recalled as a witness on behalf of the Government, and having been heretofore duly sworn testified further as follows:

Direct Examination

(Resumed)

By Mr. Thurman:

Q. You are the same Mr. Beals that was on the witness stand yesterday? A. Yes, sir.

Q. And you testified yesterday that you had compiled Government's Exhibit Number 16 [200] for identification, is that correct—I will let you look at it (handing document to witness).

A. Yes, sir; I did.

Q. And I believe you stated that you compiled that from the books of Mr. Spriggs, is that correct?

A. Not entirely, all the information here is not from the books of Mr. Spriggs.

Q. Now, with reference to the McBride property, the property that Mr. McBride testified to yesterday, is that contained in that exhibit?

A. It is.

Q. And how is it designated in there?

A. It is designated as "Safford Office."

Q. And what did you do with respect to that particular piece of property, Mr. Beals, in your investigation?

A. That particular piece of property was considered as——

Mr. Choisser (Interrupting): Just a minute, if

(Testimony of Arthur R. Beals.)

Mr. Thurman: When and where, and what took place?

A. The transaction was discussed with Mr. Spriggs at least, if not earlier, on October 20th, 1948, when, in the presence of Special Agent Lloyd Tucker, we discussed the cost of that particular property together with other property.

The Court: What do you call this piece of property?

Mr. Thurman: It is the property that Mr. McBride testified as being that office building in Saford.

Mr. Choisser: We make the further objection, if your Honor please, if that is the piece of property, the record shows the title in that property was in Evelyn Lee Spriggs and not in the defendant at all.

Mr. Thurman: I might as well call the Court's attention right now to find out where we stand on that. There is only one income tax return made for that particular year on which there is no reflection of that property under our theory. Even though it might have belonged [204] to the wife, there was a joint income tax return for both of them and was signed by the defendant. Of course, they are in evidence and speak for themselves.

The Court: A joint return?

Mr. Thurman: Yes, sir; according to our position. I don't know whether we are going to be able to prove it.

The Court: It does not seem to indicate that on the face of the return. That is '46, '47——

(Testimony of Arthur R. Beals.)

Mr. Thurman: There was no return at all filed for the wife—no, they are all by Claude E. Spriggs.

The Court: It doesn't indicate to be joint returns.

Mr. Thurman: I was in error on that. As I understand it, he took exemptions for both of them.

The Court: He can still do that and she can still file a return and owe a tax, too. I don't know. In view of your stipulation, that property was her separate property?

Mr. Thurman: It is already stipulated as to that, your Honor.

The Court: Therefore, any answer to the [205] question you asked would be immaterial.

Mr. Thurman: Well, taking it in the light of only one income tax return here.

The Court: You are prosecuting the defendant here for fraud on his income tax return, nothing to do about Mrs. Spriggs. This was the year——

Mr. Choisser (Interrupting): '46.

Mr. Thurman: We take the position it is a community property state, income to both of them.

The Court: I thought you stated that it was her separate property?

Mr. Thurman: That was, but there was a sale of it under our theory, a profit that was not reported.

The Court: You mean, that if the wife sells her separate property half of it is her husband's? I'd like to see the wife that you can get away with that.

Mr. Thurman: I didn't make any such asser-

(Testimony of Arthur R. Beals.)

tion, nor did I intimate it. I am talking about the income tax return made only by Mr. Spriggs, no notice or no mention made in there of any sale of that property.

The Court: It was his wife's property, you stipulated, it was his wife's property. [206]

Mr. Thurman: Yes.

The Court: Why didn't you indict Mrs. Spriggs?

Mr. Thurman: I don't know. Mr. Beals, in your investigation of this case, did you go into the element of depreciation set forth in the income tax returns of this defendant? A. Yes, sir.

Mr. Choisser: Your Honor please, we will object to that as being irrelevant, incompetent and immaterial, no foundation for this. We don't know what property he is talking about; if he is just talking about joint income.

The Court: That is obviously a preliminary question and your objection is overruled.

Mr. Thurman: That is all. With respect to the year 1946 concerning the depreciation set forth by the defendant in his income tax return for that year?

A. I can refer to my working papers and testify from them.

Q. Well, you are familiar with this income tax return, are you not, being Government's Exhibit 2 in Evidence? A. I am.

Q. Well, turn to the place where it shows [207] the depreciation. A. Yes (complying).

Q. And did you ever discuss the depreciation

(Testimony of Arthur R. Beals.)

with Mr. Spriggs set forth in that income tax return for the year '46? A. Yes, sir.

Q. And when was that?

A. If not before, on October 20th of '48.

Q. And whereabouts?

A. At the office of the Collector of Internal Revenue.

Q. Who was there at that time, if you remember?

A. Mr. Tucker.

Q. And what was said by you and what was said by Mr. Spriggs at that time with respect to the depreciation as set forth in that exhibit?

Mr. Choisser: I object to that as being immaterial, irrelevant and incompetent, no foundation laid for that. The exhibit is in evidence and it speaks for itself; no basis for the foundation of any such conversation for the introduction of it.

The Court: Overruled.

The Witness: I asked Mr. Spriggs to identify these pieces of property which he had—which [208] appeared for depreciation in this schedule "F" of the return, their being identified on the return only as "Adobe, frame, cement, cement and cement," to which Mr. Spriggs gave me—he identified each of these pieces of property.

Mr. Thurman: How did he identify them at that time?

The Court: What did he say?

A. He said that this piece of property listed as cement, date acquired in '39 for \$2500.00, was the Safford office.

(Testimony of Arthur R. Beals.)

Mr. Choisser: Just a minute, we will object to that and ask that it be stricken, if your Honor please. We are still talking about the separate property of Mrs. Spriggs. Now, counsel is going back into something else that the Court has just ruled on.

Mr. Thurman: It is on the income tax return of the defendant.

The Court: The objection is overruled. This was a conversation with the defendant. Go ahead.

The Witness: And the return further shows depreciation claimed——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, the question was, not what [209] this return shows, the question was, what was the conversation with the defendant.

The Court: Did you call his attention to that?

A. Pardon?

Q. Did you call Mr. Spriggs' attention to what you say the return showed?

A. We discussed it in detail, yes, sir.

Q. All right, go ahead and relate the conversations.

The Witness: Well, there are other pieces of property here listed.

The Court: Which "cement" was that, that Safford office?

A. The one listed as acquired in '39.

Q. All right, go ahead, what was the rest of the conversation?

A. Now, the item as listed here at \$2500.00——

Mr. Choisser (Interrupting): That is not the

(Testimony of Arthur R. Beals.)

conversation; we object to that as not being responsive.

The Court: I think he is trying to relate the conversation as near as he can. What item are you referring to?

A. The Safford office, the cement property he acquired in '39. [210]

The Court: All right.

A. Relative to the cement property acquired in '39 and listed on the return at \$2500.00, I asked Mr. Spriggs the manner in which this property was obtained. He stated that, in substance, that the property had been given to his wife by her father and in asking—I asked him further the value of that property at the time and if he knew the cost. I asked him if he knew the cost of that property to her father. He said that he did, that it was \$2,000.00. Then I asked him the reason for listing it at \$2500 on the return. He stated that he had purchased equipment that was in the office at the time it was acquired by the father-in-law and that he had acquired equipment at that same time which was left in the office and that that accounted at least for the most part for the difference.

Mr. Thurman: What is the next item in there?

A. Well, there are other items elsewhere.

Q. What are they; let's go on with them.

A. All right. The adobe, acquired in '45—

Mr. Choisser (Interrupting): Just a minute. May I ask which piece of property this is with reference to the bill of particulars, of counsel?

(Testimony of Arthur R. Beals.)

The Court: This is a conversation here [211] that he is having with the defendant. Maybe we will find out. Maybe it is not in the bill of particulars.

A. I would like to locate some notes which I made at the time.

The Court: Of your conversation with Mr. Spriggs? A. Yes, sir.

Q. You have them?

A. They are here some place (the witness procures documents).

Mr. Thurman: Now, we are on the 1946 income tax return, is that correct?

A. Yes, sir.

Q. All right.

A. All right. Mr. Spriggs identified the item listed on the return "adobe" acquired in '45 at a cost of \$7,500.00 as the East Jefferson Street property, and he stated further—

The Court (Interrupting): Now, just a moment. This is relative to your item of depreciation in the bill of particulars, Mr. Thurman, Page 2, relating to count 2 of the indictment. It says: "Overstatement of depreciation by the defendant is the result of his having falsely represented the cost of the property [212] located on Henshaw Road, Phoenix, Arizona——." Nothing is said about the Safford office or either with relation to that count or count 3.

Mr. Thurman: Well, your Honor, the bill of par-

(Testimony of Arthur R. Beals.)

ticulars limits it to the Henshaw Road property, that is true.

The Court: And, therefore, I think the evidence concerning the conversation with the defendant on the Safford property is not material and it is ordered stricken and the jury is instructed to disregard it.

Mr. Thurman: I was thinking of other acts.

The Court: When the Government furnishes the defendant a bill of particulars and confined itself to this item of depreciation, I understood that is what all of this testimony went to; that is, an overstatement of the depreciation.

Mr. Thurman: With respect to the Henshaw Road property, are you familiar with that transaction?

The Court: Well, did you have any discussions with him concerning the depreciation on the Henshaw Road Property?

A. Yes, sir.

Q. When and where, and who was present?

A. At this same time. [213]

Q. All right, what was said?

A. He identified the item in the depreciation schedule as cement, 1945, as being the Henshaw Road property, and when I inquired as to the cost which is listed there as \$20,000.00, he stated that he didn't have detailed records of that, the cost of that property, but that it cost him at least that much and it was in the process of construction; he had purchased the property and he went into the hole

(Testimony of Arthur R. Beals.)

on that, that he had acquired it for a cost, oh, as I recall, it was \$2,750.00, and at the time there were, I think, two rentals on it, two units. One was in condition for renting and the other, I believe, was a garage, I am not just certain as to that, but, at least, this property had been acquired in '45—

Mr. Choisser (Interrupting): Just a minute, if your Honor please, we are far afield in the conversation.

The Court: Is that what he said; are you relating his conversation?

A. I am trying to, sir.

Q. Well, all right.

A. He stated that the property had been acquired in '45 and that through the year '46 he [214] had made various additions to this property, and that as of the end of '46 he felt that he had invested in this property \$20,000.00—a total of \$20,000.00. I further asked Mr. Spriggs to account for the large investment in property as indicated on this return, noting that earlier returns had—

Mr. Choisser (Interrupting): Just a minute, I don't think—

The Court: Did you say anything to him about it?

A. Yes, sir.

Q. All right, don't say what you noted; say what you said.

A. And I called his attention to it, so I said, I said—I said that the increase in investment—the increase on investment of the depreciable property

(Testimony of Arthur R. Beals.)

that is listed in the depreciation schedule had increased materially from the period of '44 and '45 to this listing of the property on the '46 return, and I also commented to him, or asked him if such was the result of borrowed funds, why not a deduction for interest which would indicate that he was paying interest on these funds with which he had purchased this large amount of rental property. [215] Showing on this '46 return there is a total of 10, 20, 32, 34, 35—

Mr. Choisser (Interrupting): Your Honor please, the witness is again making computation from the exhibit and not relating a conversation.

A. I stated to Mr. Spriggs that the '46 return showed an investment in real property, or depreciable property of approximately \$36,000.00 whereas, the earlier returns do not show anything like that amount, and he stated—I asked him to state for me the source of those funds. He said he could not give a specific answer for it, to look at the income tax return, and if he had made that kind of money it would be shown on the income tax returns. Now then, there were later discussions regarding this rental property at that same time as related to subsequent—as relates—

The Court (Interrupting): That is the Henshaw Road property?

A. Yes, sir; relating to the Henshaw Road property at the end of '45—no, at the end of '47—in the '47 return. I asked Mr. Spriggs likewise to identify the items listed in the depreciation sched-

(Testimony of Arthur R. Beals.)

ule on that return and he identified two items on the '47 return. [216] The Court: Let's stay with the Henshaw Road property; that is all we are trying here and that appears about all the Government is interested in from the bill of particulars.

A. Yes. I have two items listed on the '47 return; one acquired in '45, Henshaw, \$20,000.00, and another "cement" listed at \$20,000.00 and he stated, or he said that both of those items were Henshaw Road property, that the second \$20,000.00 item there represented investment, additional investment which he had made in the year '46 making a total of \$40,000.00 in the Henshaw Road property at the end of '40——

The Court (Interrupting): 6.

A. '47. This was the '47 return which listed the two items of \$20,000.00, making a total of \$40,000.00 in the Henshaw Road property as of the end of '47. Now, Mr. Spriggs, toward the end of our discussion and after I had stated to him that at the end of '47 his investments there had increased something like over \$60,000.00, I asked him where the funds, or rather, he, through our discussion, he made the statement, well, he says, "You are going to ask me where I got that money?", and I said, "You are right, Mr. Spriggs; where did you get that money?," and he [217] said, "Well, look at my returns; it is all on there," but I searched the return and could not find it.

The Court: Did you say that to him?

A. I did.

(Testimony of Arthur R. Beals.)

Q. This is just the conversation?

A. Yes, sir; yes, sir. I told him that I could not find any income reported on any of his returns which would make such an investment possible without—without having borrowed the funds involved, and he identified to me at the time the specific loans which he had negotiated at the bank and which I have taken into account in my work sheets, and so on, and they were not—they did not satisfy us; they did not make this large investment possible, the funds, even considering the amount which he borrowed at the bank.

The Court: That is what he told you, now?

A. Yes, sir. I told him the amounts which had been borrowed from the bank and the amounts which he had reported on his income tax return did not make—would not supply sufficient funds to have such an investment in the property, so at that—our discussion at that point was ended. He said that he would go back and go over his [218] records, and so on, and see if he could justify that, and at that point I endeavored, as I had endeavored—

Mr. Choisser (Interrupting): Just a minute; I object to that.

The Court: No, just a minute.

Mr. Choisser: I ask that it be stricken.

The Court: Not what you endeavored, just the conversation. If that was the end of the conversation, that was the end of the conversation.

A. May I back up for a moment and tell something additional that was discussed at that time?

(Testimony of Arthur R. Beals.)

The Court: In the conversation?

A. Yes, sir.

Q. If it relates to the Henshaw Road, Phoenix, Arizona, depreciation.

A. Yes, sir. I had asked Mr. Spriggs if he was sure that he had as much as \$40,000.00 invested in that property, and he pounded on the desk and said that he most assertedly had and he stated that on the whole he had to pay black market prices for tin, for lumber and for building blocks and everything else that he had in the property and he had at least \$40,000.00, to which I questioned Mr. Spriggs further on that [219] and stated to him that I could not see where the funds had come from and his only answer was that he was sure he had put it in there and he was sure it would be reported on the return; that his return would disclose all of the funds with the exception that he related further that he had received from his father-in-law——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, we object to that as not relating to the depreciation and has no bearing on the item shown on the bill of particulars whatsoever.

The Court: Yes, I think it does. Overruled. How much did he receive from his father-in-law?

A. He stated that through the course of the past years he had received from his father-in-law through—by means of this Safford office property which we had taken into account in our schedule——

The Court (Interrupting): That may be stricken. Just your conversation, just what you told him and what he said to you.

(Testimony of Arthur R. Beals.)

A. Relative to the source of funds, Mr. Spriggs stated that—which would have been available for the purchase of this property, he stated that his father-in-law had paid some [220] \$8,800.00, or such an amount on the purchase of a farm——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, we are getting back to the subject we have already gone over. Conversations relating to other property has nothing to do with the Henshaw property. Funds coming from some other place, from another party has nothing to do with it.

The Court: It still has to do, according to the witness, where he got the money to make the investment on the unit property which was depreciated.

Mr. Choisser: Where the monies came from would not affect the depreciation.

The Court: Whether or not it came would. Go ahead.

A. He stated that he had not received funds from any sources other than from income and from these two items which he had received from his father-in-law, or that his wife had received from the father-in-law, that those were the only sources of funds that he had; that is, of his own equity in funds. Of course, he had borrowed funds and he related that——

The Court: All right. [221]

A. And he so affirmed it later by a sworn statement.

Mr. Thurman: Made in a sworn statement.

(Testimony of Arthur R. Beals.)

Mr. Choisser: We ask that it be stricken. We are concerned with the conversation.

The Court: It may be stricken.

Mr. Choisser: And the jury instructed to disregard it.

The Court: The jury is instructed to disregard it.

Mr. Thurman: Subsequent to the time you had this conversation which you have related, Mr. Beals, did you again have a conversation with the defendant concerning this matter of depreciation, especially as to the Henshaw property?

A. Yes, I did.

Q. And when was that?

A. January 6th of '49.

Q. And who was there at that time?

A. Mr. Tucker and myself and Mr. Spriggs.

Q. And was any mention made in any conversation at that time the fact that this Henshaw property appeared twice in schedule "F" under the explanation of deductions for depreciation?

A. Yes, we discussed that.

Q. Well, what did you say to him about [222] that and what did he say to you at that time?

A. On the meeting of January 6th—we discussed it on January 6th, then again on January 24th.

Q. Of what year? A. '49.

Q. What was said at that time in substance as near as you can tell now?

(Testimony of Arthur R. Beals.)

A. This piece of property, the Henshaw Road property, I had listed this property——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, again we object to the witness giving what he did and his conclusions. The question is, the conversation.

The Court: Conversation, that is right.

A. I stated to Mr. Spriggs that——

Mr. Thurman (Interrupting): Let the record show that the witness is being handed Government's Exhibit 3 for Identification, which is the '47 income tax return. Now, can you answer the question?

A. On January 24th, we were—I was discussing with Mr. Spriggs, and relative to this Henshaw Road property, and I was again—I think the 24th was the date that he came back in and again asserted that he had at least \$40,000.00 [223] invested in that property, the very minimum of \$40,000.00, so, I can't tell what I did?

The Court: No, this is the conversation with him, not what you did or what you thought.

A. I asked Mr. Spriggs relative to the dates on which this addition; that is, these additions had been made, these additional investments, to which he gave me a very detailed analysis of the investments in each of these pieces of property.

The Court: That is, the Henshaw property?

A. Yes, sir; each of these various units on the Henshaw Road property, and they totalled about \$40,000.00.

(Testimony of Arthur R. Beals.)

Mr. Thurman: Have you got that?

A. He identified these units as Unit 1, 2, 3, 4, up to 13, I believe—yes, I have the worksheet which I prepared from his statements to me.

The Court: Did he see it?

A. Yes, sir.

Q. Your worksheet?

A. It was made in his presence. He observed my—in fact, I stated to him, “Well, now, we are—inasmuch as these various units have been acquired at different times and at different costs; that [224] is, all of these units on the Henshaw Road property which had not been acquired at the same time, so we would have to set it up individually for depreciation,” so at that he went through and listed each piece of property in detail for me so I could make and prepare a depreciation schedule. I have before me now my worksheet.

Mr. Thurman: Let me see it.

The Court: That was made in your handwriting?

A. Yes, sir.

Q. Did Mr. Spriggs see it, or did he just see you writing something?

A. Well, I don't know how he could see me writing something without seeing it. That is, it was prepared right there in his presence.

Q. I mean, did you show it to him after you got through? A. Yes, I discussed it with him.

Q. Did you show it to him?

A. Yes, sir.

(Testimony of Arthur R. Beals.)

Mr. Thurman: Mark it.

(Whereupon the document was marked as Government's Exhibit 28 for Identification.)

Mr. Thurman: I offer it in evidence.

The Court: You offer it in evidence? I don't know what it is. [225]

Mr. Thurman: Well, it is just the document he just got through describing. I think the Court should see it first before—— (handing the document to the Court).

The Court: What was the Henshaw property, a bungalow court or motel?

A. On the order of a motel.

Q. All right, now you are relating a conversation with Mr. Spriggs?

A. I stated to Mr. Spriggs that we would have to list this property in detail inasmuch as the different units had been constructed in different years in order to prepare the depreciation schedule, and to that he listed the items, or he related the items to me and I recorded them on this sheet and when—— when we had——when we got nearly all of the items listed, he asked, "Well, how much does that account for?" I've forgotten now just the exact amount, but he said, "Well, these last items must have cost the difference." I don't recall; we might have gone back and changed some of the others, but nevertheless, the final apportionment there as between the units with Mr. Spriggs' approval——

Mr. Choisser (Interrupting): Just a minute——

(Testimony of Arthur R. Beals.)

The Court: Is that what he said? [226]

A. Yes, sir; he said that was——

The Court (Interrupting): You put that down on that exhibit there, Number 28, the cost of items?

A. Yes, sir.

The Court: Do you offer that in evidence?

Mr. Thurman: Oh, yes.

The Court: Any objection?

Mr. Choisser: Yes, sir; we do, if your Honor please. We object, the proper foundation has not been laid for this exhibit to be introduced in evidence; irrelevant, incompetent and immaterial.

The Court: Well, I think it has. The witness says he showed it to Mr. Spriggs, that he discussed it and Mr. Spriggs gave him the figures. The objection is overruled. It may be admitted.

(Whereupon the document was received as Government's Exhibit 28 in Evidence.)

Mr. Thurman: Now, with relation to this depreciation matter, Mr. Beals, if I am in error, please correct me, but did you discuss with the defendant at either one of these two meetings how it came about that the Henshaw property was placed twice under Schedule "F"?

The Court: He has already stated that [227] discussion.

The Witness: Yes.

The Court: He has already related it. He said \$20,000.00—the additional \$20,000.00 was on the previous year's return and the next year he spent \$20,-

(Testimony of Arthur R. Beals.)

000.00 more and he had a total of \$40,000.00 investment, isn't that your statement?

A. Yes, sir; but, relative to that——

Mr. Choisser (Interrupting): Just a minute, if your Honor please, we object to it as having been asked and answered and gone into.

The Court: The objection is sustained.

Mr. Thurman: Was Mr. Tucker at these conversations at the same time you were?

A. Yes, sir; he was.

Q. Both of them?

A. On the 6th and the 24th, we had a conference there that lasted four days, the 24th, 5th, 6th and 7th.

The Court: We will recess until 2 o'clock. Remember the admonition, gentlemen.

(Whereupon a recess was had at 12 o'clock noon of the same day.) [228]

(At 2:00 o'clock p.m. of said day, the trial was resumed as follows:)

The Court: Proceed. The record will show the defendant is present in person and by counsel, and the jury is present, each one in their place.

Mr. Thurman: The last question, I believe, propounded to the witness, was, "Did Mr. Spriggs shortly prior to these conversations or shortly thereafter sign any statements?"

A. Yes, he did.

Q. (By Mr. Thurman): Have you got them?

(Testimony of Arthur R. Beals.)

A. Yes, I have (handing several documents to counsel).

Q. Are these the ones you have reference to?

A. Yes, sir.

Mr. Thurman: May these be marked, purported statements, the ones signed on the 11th day of February, '49, as Government's Exhibit—

The Clerk: 29 for identification.

Mr. Thurman: And the one purported to be signed on the 26th day of January, '49.

The Clerk: Government's 30 for identification.

Mr. Thurman: And the one purported to have been signed on the 25th day of January, '49.

The Clerk: Government's 31 for identification.

The Court: Have you seen these before, [229] counsel?

Mr. Choisser: I have not, if your Honor please.

The Court: All right, you may take them all back and read them over with your client, if you wish.

Mr. Thurman: And the one purported to have been signed on the 24th day of January, 1949.

The Clerk: Government's 32 for identification.

Q. (By Mr. Thurman): At the time that these particular statements were made and signed did you give the defendant a copy of them?

A. Yes, sir.

The Court: Do you wish to look them over?

Mr. Choisser: No, not any further.

The Court: Very well.

Q. (By Mr. Thurman): Referring to Govern-

(Testimony of Arthur R. Beals.)

ment's Exhibit No. 32 in evidence, dated the 24th day of January, 1949, can you give the Court and the jury the fact situation that led up to the execution of that particular instrument?

The Court: Did you prepare that instrument in the presence of the defendant?

A. Yes, sir.

The Court: Did you show it to him?

A. Yes, sir.

The Court: Did he read it? [230]

A. Yes, sir.

Q. Did he sign it in your presence?

A. Yes, sir, he signed it under oath.

The Court: You administered the oath?

A. No, sir, I didn't.

Mr. Choisser: Did the witness say he prepared it in the presence of the defendant there?

The Court: That is what I understood the witness to say.

A. This is a typewritten——

Mr. Choisser: No, just a minute, if your Honor please. I would like him to answer the question, please. I see it is typewritten, I understand that, Mr. Beals.

A. No, I did not prepare this particular——

The Court: Statement?

A. ——piece of matter.

The Court: Who did?

A. It was typed by a Mrs. Long.

The Court: You mean you dictated it?

(Testimony of Arthur R. Beals.)

A. No, it was prepared from a work sheet which I did prepare.

The Court: I see.

Q. (By Mr. Thurman): And who is Mrs. Long?

A. Mrs. Long is the stenographer and secretary for the local office of the Treasury Intelligence [231] Unit.

Q. And after that was prepared by Mrs. Long what did she do with it, do you know?

A. She delivered it to me.

Q. All right. And then what did you do with it?

A. I submitted it to Mr. Spriggs for——

Q. Where?

A. At Room 204 in the office in the Security Building, office of the Treasury Intelligence Unit.

Q. I see. And did you read that to him or let him read it, or what did you do with it while he was there?

A. I gave it to him, and he read it for himself. In fact, he made a correction or two on it and initialed the same before he signed it.

The Court: On that date, the date it bears?

A. Yes, sir; yes, sir.

Mr. Thurman: I offer Government's Exhibit No. 32 for identification in evidence.

Mr. Choisser: Object to it, if your Honor please, as incompetent, irrelevant and immaterial; no proper foundation having been laid. It has nothing to do with the issue of fact, to wit: The depreciation of our Henshaw Street property.

(Testimony of Arthur R. Beals.)

The Court: Well, I don't know, but that is [232] not the only issue here.

Mr. Choisser: Well, I mean that is what we are——

The Court: Is that what it is offered for?

Mr. Choisser: That was the subject under discussion, if your Honor please, with this witness, what he was allowed to relate his conversations on, the depreciation of our East Henshaw Street property.

The Court: Well, counsel is not limited to having this witness testify to that. Is this offered generally in support of the indictment?

Mr. Thurman: Yes, your Honor, and I am a little afraid I might be in error on the record, and I don't want to do it. Now, was this for the year 1944? Is that the breakdown as a reflection of what happened in '44.

The Court: No, this says 1941.

Mr. Thurman: Well, that goes to the cost of that property, that they attempt to show the capital gain, and certainly they got this property long before he sold it. That goes back to before he sold the property.

Mr. Choisser: That is the reason, if your Honor please, we will again renew our objection.

Mr. Thurman: Well, the burden is on the Government to show what he did for it. [233]

The Court: Well, I will withhold a ruling on it a moment, and let's see the rest of your statements and see what they look like.

(Testimony of Arthur R. Beals.)

Mr. Thurman: Will you admit the same as to this other one?

Mr. Choisser: Yes, the same situation.

The Court: In other words, you stipulate that all of those statements were seen by the defendant, read by the defendant, and signed by him on or about the date they bear?

Mr. Choisser: Yes, and that they purport to be what they show.

Mr. Thurman: Just a minute, so we will know what we are getting into the record here, please.

The Court: All right. That is 29, 30, 31. The objection is overruled. They are admitted in evidence.

The Clerk: Does that include 32 also, your Honor?

The Court: 29, 30, 31, and 32.

The Clerk: Government's 29 to 32, inclusive, in evidence.

(Whereupon the documents referred to were received and marked as Government's Exhibits 29 to 32, inclusive, in evidence.)

Mr. Thurman: I now offer in evidence— [234] that is, to reoffer it, your Honor—that is Government's Exhibit No. 16 in evidence, which Mr. Beals testified to yesterday, laid the foundation for, and the Court took it under advisement, I believe.

Mr. Choisser: That being a balance sheet as of December 31st, 1942?

Mr. Thurman: Signed on the 24th day of January, 1949.

(Testimony of Arthur R. Beals.)

The Court: Well, you had offered that yesterday with relation to only one particular piece of property.

Mr. Thurman: Yes, your Honor, that is correct.

The Court: I understand you are offering it now generally as to all counts?

Mr. Thurman: That is generally, yes, sir. This is as to the——

The Court: You were offering that only as to one parcel of property?

Mr. Thurman: That was my understanding of it yesterday, yes, your Honor.

The Court: Are you now offering it for that?

Mr. Thurman: Yes, your Honor.

The Court: Then, the objection is still good.

Mr. Thurman: Well, you didn't sustain the objection yesterday; you took it under advisement.

The Court: Well—— [235]

Mr. Thurman: All right.

The Court: All right.

Mr. Thurman: The same condition and same status now.

The Court: If you offer it generally, it is admissible.

Mr. Thurman: Well, I may later do it, but I want to——

The Court: All right.

Q. (By Mr. Thurman): Mr. Beals, I hand you Government's No. 6 for identification, which is a purported check dated June 22nd, 1942, and I will ask you if you can identify it?

(Testimony of Arthur R. Beals.)

A. Yes, sir, I can.

Q. All right. Now, how do you identify this exhibit, Mr. Beals?

A. That is a check signed by Mr. Spriggs.

The Court: Well, did you have any conversation with Mr. Spriggs about it?

A. Yes, sir.

The Court: When and where, and who was present?

A. Which Mr. Spriggs identified to me as the payment, his payment of his portion of the inventory at the time he went into the Hi-de-Ho partnership with Mr. Brown.

Mr. Thurman: I offer the Government's [236] No. 6 for identification in evidence.

The Court: Admitted.

Mr. Choisser: May I ask one question? Where did you obtain this check, Mr. Beals?

A. It was given to me by Mr. Spriggs.

Q. Given to you to keep in your records, by Mr. Spriggs?

A. It was given to me along with all the other—a big box of loose papers and so on.

Q. You returned the other loose papers to Mr. Spriggs? A. Yes, sir.

Q. And you kept this out? A. Just——

The Court: Well, did you or didn't you?

A. Well, it is out.

The Court: Well, did you keep it out?

A. I don't know——

Q. (By Mr. Choisser): You have had it in

(Testimony of Arthur R. Beals.)

your possession since that time, have you not?

A. Not continuously, no, sir.

Q. Who else had possession of it except yourself?

Mr. Thurman: I think that is immaterial, improper cross-examination, unless it is shown that it has been changed. [237]

Mr. Choisser: We object to it, if your Honor pleases, on the ground that the proper foundation has not been laid for the introduction in evidence of this exhibit.

The Court: Well, do you want to continue your voir dire or are you through with it?

Mr. Choisser: That is all. We are through.

The Court: The objection is now that there is no foundation laid?

Mr. Choisser: That is right, if your Honor please.

The Court: Overruled. Admitted.

The Clerk: Government's 6 in evidence.

(Whereupon the document last referred to was received and marked as Government's Exhibit 6 in evidence.)

Q. (By Mr. Thurman): Mr. Beals, you testified that you made a summary from the records, of the books and records of the defendant, that you testified to that yesterday, with respect to the 1944 income tax return? A. Yes, sir.

Q. And you have been in the courtroom all through the case, have you? A. Yes, sir.

(Testimony of Arthur R. Beals.)

Q. And taking into consideration from [238] your summary and the evidence as to the purchase price paid by the defendant, Spriggs, for the Hi-de-Ho in the sum of \$5000, and the inventory in the sum of \$491.22, and a profit of \$580.86, as shown by the testimony of Mr. Brown, and I believe the partnership income tax return of the \$580.86, and the sale price that Mr. Spriggs paid Mr. Brown in the sum of \$8,400, can you compute the profit on the Hi-de-Ho deal, if any?

Mr. Choisser: If your Honor pleases, just a minute. Are you through?

The Court: Is that the end of the question?

Mr. Thurman: Yes, your Honor.

Mr. Choisser: We will object to that, if your Honor pleases, as assuming facts not in evidence. It calls for a conclusion of this witness.

The Court: You are asking him to substitute his judgment for the judgment of the jury. The objection is sustained.

Q. (By Mr. Thurman): Mr. Beals, in these conversations that you had with the defendant with respect to the depreciation for the year 1947, have you told us all of the conversations that you had with the defendant concerning that?

A. No. No, sir, I haven't.

Q. What have you left out, if anything? [239]

Mr. Choisser: Wait just a minute, if your Honor pleases. We will object to that as not a proper question; ambiguous; not intelligible. If there was a conversation, let's find out if there was one, lay

(Testimony of Arthur R. Beals.)

the proper foundation, and then what it was.

The Court: Well, he was referring to the conversation to which the witness testified this morning, I take it.

Mr. Thurman: That is what my question purported to convey.

The Court: Objection overruled.

A. During this conference beginning on January 24th, 1949, and continuing through the 25th, 26th, and 27th, I think the series of events and conversations ran something like this: I asked Mr. Spriggs relative to the cost of each of these pieces of property that are listed on these statements which have been admitted in evidence, balance sheets as of the close of the various years Nineteen Forty—well, actually it went back to '41, '2, '3, '4, '5, and '6.

The Court: Excuse me, Mr. Witness. I have been thinking over these net worth statements here that have been admitted. I take it that they are offered here to show that any difference between the [240] net worth on one date and a subsequent date shows the income. I am going to reverse myself and sustain the objection to them. I do not think that that is the way to prove income. It lists this property. It states a person's opinion as to the value of the property. One might well have a house that they pay 5000 for, and two years later in making up a net worth statement they might consider it worth 30,000. That wouldn't be income; it wouldn't be taxable income. I am going to reverse myself. I know that there are decisions to the contrary in

(Testimony of Arthur R. Beals.)

the Appellate Courts, but I do not believe that it is fair or just or proper.

Mr. Thurman: All right, your Honor, and I would like to state for the record—

The Court: The objections to Exhibits 32, 30, 31, and 29 will be sustained.

Mr. Thurman: Your Honor, I don't agree with what the court said the purpose was there for their introduction. The purpose is, and it may be erroneous, but it is to show the cost of the real estate to Mr. Spriggs in the initial instance, and then the sale of it, which shows the difference.

The Court: Well, this wouldn't tend to do that, because, for instance, here there are parcels [241] of property that run through here and they change in value.

Mr. Thurman: They may change. If they went up in value, and he sold them, that would be a capital gain, and that is what we want to show.

The Court: Well, I think the Government can prove an income tax case without trying to take a matter of a financial statement and endeavoring to depend upon some argument in connection with it. If somebody bought something and paid so much, they can prove that; and if they sold it for so much, that can be proved.

Q. (By Mr. Thurman): Going back to the question that was propounded to you, Mr. Beals, with respect to the insertion—I will shorten it up—of the Henshaw property twice in the same income tax re-

(Testimony of Arthur R. Beals.)

turn in the year 1947, did you discuss that in detail with Mr. Spriggs at these meetings?

A. Yes, sir.

Q. And what was said with respect to the reason of putting it in twice, putting the same building in twice, and taking a depreciation twice in the same year on the same building?

The Court: On what year?

Mr. Thurman: '47, your Honor.

The Court: '47. Well, I thought he [242] testified concerning that this morning. You had asked him about '46, and he testified there was 20,000; then in '47 there was 20,000 twice. And did you not say that you had asked him about that and he said that he had spent that additional money?

A. Yes, sir, but he later made additional statements relative to that piece of property.

The Court: Other than what you have heretofore testified concerning?

A. Yes, sir. Yes, sir.

Mr. Choisser: May I ask one question? Do I understand that the same identical piece of property is listed twice in the same 1947 income tax return?

A. No, sir.

Q. That is what counsel said, the same piece of property was listed twice.

A. May I explain that?

The Court: Well, I certainly understood your testimony to that effect this morning, but now go ahead.

(Testimony of Arthur R. Beals.)

A. Well, the same piece of property is listed in two different places, but it is not the same item listed twice. Now, may I explain further on that?

The Court: Well, no, you can only explain [243] what your conversation was with him.

A. All right. I asked Mr. Spriggs relative to explaining the fact——

The Court: Well, there are two items on there called "Cement" each \$20,000?

A. Yes, sir. Yes, sir.

The Court: You testified that they both related to the Henshaw Street property?

A. Yes, sir. Yes, sir.

The Court: And 20,000 was spent in '46 or '45, whatever year that was, and 20,000 the next year?

A. Supposedly.

The Court: Well, that is what he told you?

A. Yes. Yes.

The Court: I see. All right.

A. Now, explaining, I asked Mr. Spriggs to explain that, and he said that the \$20,000, the second \$20,000 item there represented the additional investment which he had made during the year of 1947. Then I asked Mr. Spriggs how he would account for the increase in investment there, as to the source of the funds. He had stated previously that the only source of funds that he had was——

Mr. Choisser: Just a minute, if your Honor please. [244] We are not concerned——

The Court: You went all over that this morning.

The Witness: All right.

(Testimony of Arthur R. Beals.)

Mr. Choisser: —with what was said previously. We object to that as having been asked and answered thoroughly and gone into on direct examination.

The Court: Yes. The objection is sustained.

Mr. Thurman: You may cross-examine.

Mr. Choisser: May we have a couple of minutes' recess at this time? Maybe we can shorten this if—

The Court: Counsel, you have persuaded me. (To the Jury) Remember the admonition.

(A brief recess was taken.)

The Court: Cross-examine.

Cross-Examination

By Mr. Choisser:

Q. Mr. Beals, this Henshaw Street property that we have been talking about this morning and this afternoon consists of land, real estate, real property? A. Yes, sir.

Q. It consists of improvements and buildings on it? [245]

A. Yes, sir.

Q. It consists of furniture and fixtures and furnishings in those buildings? A. Yes, sir.

Q. It consists of various store equipment and things like that on that property, store fixtures?

A. I think one unit has store fixtures on it.

Mr. Choisser: Yes.

(Testimony of Arthur R. Beals.)

The Court: A barber shop?

A. Yes.

Q. (By Mr. Choisser): Now, anything else that you know of that makes up that item of property, that I haven't asked you about?

A. No, I don't—I didn't actually go into these buildings. I took Mr. Spriggs'—

Q. I see. As far as you know, it consists of those different items of property? A. Yes.

Mr. Choisser: That is all.

Redirect Examination

By Mr. Thurman:

Q. When did you last see the property?

A. Oh, I think it was early 1949.

Q. Did you see the property in 1944?

A. Oh, no. [246]

Q. 1947? A. No.

Q. 1946? A. No.

Q. Do you know what was on that property in any of those years I have mentioned, of your own knowledge? A. No, I do not.

Mr. Thurman: That is all.

Mr. Choisser: That is all.

The Court: Step down. Next witness. Are you through with Mr. Beals now?

Mr. Thurman: I am.

Mr. Choisser: Yes.

Mr. Thurman: Mr. Tucker.

The Court: You can be excused if you wish, or you can stay if you wish.

LLOYD M. TUCKER

of San Diego, California, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Thurman:

Q. Please state your name.

A. Lloyd M. Tucker.

The Court: Floyd? [247]

A. Lloyd.

Q. (By Mr. Thurman): And where do you live, Mr. Tucker?

A. San Diego, California.

Q. How long have you been living over there?

A. Since April of 1951.

Q. And prior to April of 1951, where were you located?

A. Phoenix, Arizona.

Q. And during the time you were in Phoenix, Arizona, were you employed by the Federal Government?

A. Yes, sir.

Q. And in what capacity?

A. As a special agent for the Intelligence Unit of the United States Bureau of Internal Revenue.

The Court: Are you now so employed?

A. Yes, sir.

Q. (By Mr. Thurman): And what are your duties and responsibilities as such officer, Mr. Tucker?

A. Investigation of various matters before the Treasury Department and the investigation of income tax cases.

(Testimony of Lloyd M. Tucker.)

Q. And did you have an occasion as such officer to work on this particular case now before the Court? [248] A. Yes, sir, I did.

Q. And are you acquainted with Mr. Spriggs, the defendant in this case? A. Yes, sir.

Q. And when did you first meet Mr. Spriggs?

A. On October 20th, 1948.

Q. And where did you meet him first?

A. In the office of the Collector of Internal Revenue in the Post Office Building in Phoenix.

Q. And had your investigation been started at that time? A. No, sir.

Q. It had not. When did you next meet him?

A. I met him next on January the 6th, 1949.

Q. Had your investigation been started by that time? A. Yes, sir.

Q. And who was there in the office besides yourself and Mr. Spriggs, if anyone?

A. Mr. Beals was present on both of those dates.

Q. I see. And when did you meet him again, if you did?

A. I met him next on January 24th, 1949.

Q. And where was that?

A. In the office of the Intelligence Unit [249] at 405 Security Building, Phoenix.

Q. And who was present at that meeting, if you remember? A. Mr. Beals.

Q. And Mr. Spriggs?

A. And Mr. Spriggs.

Q. When did you meet him again, if you did?

A. On January 25th, 1949, at the same place.

(Testimony of Lloyd M. Tucker.)

Q. Same place. And was Mr. Beals present that time? A. Yes, sir.

Q. And when was the next time you met in that office, if you did?

A. On January 26th, 1949.

Q. That all took place here in Phoenix, Arizona?

A. Yes, sir, in the office of the Intelligence Unit in the Security Building.

Q. Was Mr. Beals there on that date? What date was that? What date did you give me?

A. Yes. January 26th.

Q. 26th. Did you meet with him again subsequent to that time?

A. Yes, sir, on January 27th.

Q. Of what year? A. '49.

Q. Same place? [250] A. Yes, sir.

Q. Same persons present? A. Yes, sir.

Q. And did you meet with him again subsequent to that time?

A. Yes, sir, on February 11th, 1949.

Q. And who was there that time, February 11th? A. Mr. Beals.

Q. And Mr. Spriggs and yourself?

A. And Mr. Spriggs.

Q. Did you meet with him after February 11th?

A. No, sir.

Q. Now, going back to the first time that you met Mr. Spriggs in the office of the Internal Revenue—or in the Security Building, Phoenix, Ari-

(Testimony of Lloyd M. Tucker.)

zona, did you have any conversation with him concerning the facts in this case?

A. The first time I met him, sir, was in the Collector's Office.

Q. All right. I said the first time you met him in the Security Building.

A. I am sorry.

Q. That is all right.

A. Yes, sir, I did.

Q. And what date was that again?

A. That was January 24th, 1949. [251]

Q. And you said at that time your investigation had started? Is that correct? A. Yes, sir.

Q. Is that the first time you had met him after your investigation had started?

A. No, sir, I met him on January 6th, 1949, at the Collector's Office.

Q. When did you start your investigation?

A. On October 20th, '48.

Q. Oh. And what conversation did you have with him on October 6th?

Mr. Choisser: Just a minute, if your Honor pleases. For the record, may we interpose the objection that there has been no showing of any crime having been committed, no connection with the defendant therewith, and therefore any statement or admission or whatever he might have said is not admissible at this time. There has been no corpus delicti proved, there has been no connection of the defendant with it, therefore, his statements are inadmissible at this time until that is shown.

(Testimony of Lloyd M. Tucker.)

The Court: Overruled.

Mr. Thurman: Please reread the question.

(The last question was read.)

Q. (By Mr. Thurman): If any. [252]

A: The date was October 20th. I had none on October 6th.

Q. What is that?

A. I met him first on October 20th, 1948.

Q. Did you have any conversation with him then? A. Yes, sir, I did.

Q. About this case? A. Yes, sir.

Q. All right, what was it?

A. I asked him if——

Q. In substance, of course?

A. In substance. I asked him if the Henshaw Road property as shown on his return in the amount of \$40,000 was his correct cost basis for that property.

Q. And what year was that shown in, what taxable year?

A. That was shown on the return which he filed for the calendar year of 1947.

Q. All right, proceed.

A. Mr. Spriggs stated that the \$40,000 valuation which he had placed on that property was the correct cost.

The Court: Wasn't?

A. Was.

The Court: Was. [253]

(Testimony of Lloyd M. Tucker.)

A. Was the correct cost price on that property to him.

Q. (By Mr. Thurman): What did you say, if anything?

A. I stated that a \$40,000 investment in that property over the years of 1945, '6, and '7 was not commensurate with the income tax returns which he had filed, and I asked him again if that were the correct cost basis for that property. He stated that it was. We met that day for approximately six or seven hours. On that same day, after discussing this matter with him further, he stated, "You fellows have me charged with a lot of income, and I don't think I can explain it. Maybe I don't have \$40,000 invested in the Henshaw Road property." I asked him where he could have obtained \$40,000 to put into the Henshaw Road property, and he stated that all of the money which he had earned, received, was reflected on his income tax return. I asked him what the sources of his earnings were. He stated that he was a practicing attorney, he made money from his law practice, and he had made money from the sale of real estate. I stated that there were no sales of real estate or any real property or sales of capital assets shown on the income tax returns which he had filed for those years. He stated [254] that it wasn't necessary for him to report sales of real estate. I stated that the reporting of capital gains with particular reference to real estate was an elementary part of the income tax regulations. He stated that he had

(Testimony of Lloyd M. Tucker.)

prepared hundreds of income tax returns for clients and that he well knew that they need not be reported. On that date I told him that we would confer with him later, and I asked him to consult all of his records, memoranda, books, checks, invoices, anything he had in his possession which would enable him to substantiate the \$40,000 investment in the Henshaw Road property.

Q. And that was the substance of your conversation on this meeting in the Collector's Office?

A. Yes, sir.

Q. Now, were any papers signed at that time?

A. No, sir.

Q. When did you meet with him next then?

A. On January 6th, 1949.

Q. And where did that take place?

A. In the Collector's Office in Phoenix.

Q. And who was there at that meeting?

A. Mr. Beals and Mr. Spriggs.

Q. And can you tell us the substance of any conversations that you had with the defendant in the [255] presence of Mr. Beals with reference to this particular case?

A. Yes, sir. I asked Mr. Spriggs if he had consulted any available records and if he had refreshed his memory with respect to the cost of the Henshaw Road property, and he stated that he and his wife had both discussed it and they had spent many hours reviewing all of the records and memoranda which he had available with respect to the cost of that property. He stated that, "I know now that

(Testimony of Lloyd M. Tucker.)

I couldn't have less than \$40,000 invested in that property." I asked Mr. Spriggs if he would be willing at that time to give a voluntary sworn statement to me with respect to the cost which he stated he had in that property.

Q. And did he make—well, what happened? Go ahead. Is that all the conversation that day or not? Pardon me.

A. Yes. He stated that he was willing to give that statement, and I typed it myself there in the Collector's office.

Q. Where did you type that?

A. In the Collector's office.

Q. Was he there at that time?

A. Yes, he was there, and Mr. Beals was there.

Q. You say you typed it yourself. Have you got [256] that statement?

A. Yes sir (handing a document to counsel).

Mr. Thurman: Please mark this purported—he called it a statement. I notice it says, "Affidavit."

The Court: Statement.

Mr. Thurman: Purported affidavit.

The Court: All right, 33.

The Clerk: Government's 33 for identification.

Q. (By Mr. Thurman): And did Mr. Spriggs sign this in your presence? A. Yes, sir.

Q. Did you administer the oath?

A. Yes, sir.

Mr. Thurman: The Government offers in evidence its Exhibit No. 33 for identification.

Mr. Choisser: If your Honor please, we object

(Testimony of Lloyd M. Tucker.)

to this as not being competent to substantiate any of the items in the bill of particulars. There are other items which have heretofore been excluded in the exhibit, and it does not tend to prove or disprove any of the issues set forth in the bill of particulars.

The Court: I think it is admissible. The objection is overruled. [257]

The Clerk: Government's 33 in evidence.

(Whereupon the document last referred to was received and marked as Government's Exhibit 33 in evidence.)

Mr. Choisser: I would like to point out, your Honor, that it only concerns the purchase of two lots. It doesn't cover anything else in this Henshaw Street property.

The Court: Well, the purchase of two lots and the amount of money spent for improvements. There is another parcel or two involved there.

Mr. Choisser: Which have not been in evidence, haven't been testified about.

The Court: Well, there has been some testimony concerning them.

Mr. Thurman: Did you mark this?

The Court: 33 in evidence.

The Clerk: Yes. 33 in evidence.

Mr. Thurman: Yes. That is right.

Q. All right, subsequent to the time you received this affidavit in evidence here, Government's

(Testimony of Lloyd M. Tucker.)

33 in evidence, what took place with respect to matters in this case that you were investigating?

The Court: Well, that is a pretty shotgun question.

Mr. Thurman: Well, I don't want to lead [258] him, your Honor.

Q. What happened next? When did you see the defendant—

The Court: What happened next?

Mr. Thurman: I will withdraw the question.

Q. Did you meet Mr. Spriggs again subsequent to the 6th day of January, 1949?

A. Yes, sir, I did. I next met him on October 24th in the office of the Intelligence Unit in Phoenix.

The Court: That statement is dated January 6th?

Mr. Thurman: The 6th day of January, yes. I am not sure about—

The Court: You asked him if he met him subsequent to that. Now he says he met him October 24th, 1948.

Mr. Thurman: Let me be sure what the date is here. What date is that there?

A. That is January 6th. If I stated October 24th, '48, I was in error. I meant January 24th, 1949.

The Court: Oh. Very well.

Q. (By Mr. Thurman): Well, in the last page of this, tell me whether you are sure that is '48 or '49, the date at the bottom there. [259]

(Testimony of Lloyd M. Tucker.)

A. That is January the 6th, 1949.

Q. All right. Now, when did you meet him again subsequent to the 6th day of January, 1949, if you did?

A. Yes, sir, I met him next on January 24th, 1949.

Q. And whereabouts?

A. In the office of the Intelligence Unit, 405 Security Building in Phoenix.

Q. And who was present at that time?

A. Mr. Beals and Mr. Spriggs.

Q. And did you have any conversations with the defendant at that time and place concerning the facts in this case or the issues?

A. Yes, sir, I did.

Q. And can you state in substance what the conversations were?

A. I handed him these Government exhibits which have been marked, these net worth statements—

Q. Which ones are they?

A. I can't recall which ones.

The Court: 29, 30, 31, 32.

A. I handed him only those that would be dated January 24th. I can't recall from memory which, how many I handed him on that date.

Q. (By Mr. Thurman): I hand you Government's [260] Exhibit No. 32 and ask you if that is one of them that you handed Mr. Spriggs at that time?

A. Yes, sir.

Q. I hand you Government's No. 16 for identi-

(Testimony of Lloyd M. Tucker.)

fication and ask you if this could be one of them?

The Court: Was it one?

A. Yes, sir.

Q. (By Mr. Thurman): What conversations did you have with the defendant at that time?

A. I handed him these statements and asked him——

The Court: What are those two numbers?

A. 16 and 32.

The Court: Very well.

A. I handed him these exhibits 16 and 32 and asked him if Exhibit 32 showed his correct net worth on December 31st, 1941. He stated that it did. I asked him if he were willing to sign a statement. He stated that he was willing to sign it. I handed him Exhibit 16, which is a balance sheet dated December 31st, 1942, and asked him if all of the items shown on that statement were correct and if it correctly and truly reflected his net worth on December 31st, 1942. He stated that it did. I asked him if he were willing to sign it. He stated that he was. [261]

Q. (By Mr. Thurman): And then what did you do with those records you have there?

A. A copy was given to Mr. Spriggs. This original statement has been in the possession of the Bureau since that time until it was, of course, in your office.

Q. Now, subsequent to the 24th day of January, 1949, is it——

A. Yes, sir.

Q. Did you again see Mr. Spriggs?

(Testimony of Lloyd M. Tucker.)

A. Yes, sir, I met him again on the following day, January 25th, 1949.

Q. And about what time of the day was it, if you remember?

A. I don't remember. I think it was in the morning, but I don't remember.

Q. And where did the meeting take place?

A. In the office of the Intelligence Unit in the Security Building, Phoenix, Arizona.

Q. Who was there?

A. Mr. Beals, Mr. Spriggs, and myself.

Q. And did you on that day and at that time have any conversations with the defendant concerning the facts in this case, Mr. Tucker?

A. Yes, sir, I did.

Q. And can you relate in substance what [262] that conversation or conversations were?

A. I handed him further statements bearing subsequent dates to these—I can't remember which ones I handed him on those days—and asked him if they reflected his correct net worth on the dates indicated on those statements.

Q. If I hand these to you, can you tell us whether or not they are the ones you handed him? I now hand the witness Government's 30 and 31 for identification, and ask you whether or not you handed those particular statements or either of them to the defendant on that date?

A. Yes, I handed Exhibit 31 to the defendant.

Q. And then what took place after handing him that exhibit?

(Testimony of Lloyd M. Tucker.)

A. I asked him if this financial statement dated December the 31st, 1944, truly reflected all of his assets and liabilities on that date. He stated that it did. I asked him if he were willing to sign it. He stated that he was willing.

Q. Did he sign it? A. Yes, sir.

Q. What? A. Yes, sir.

Q. And what was done?

A. He was given a copy of this statement, and the [263] original was retained in my files for some time, and it has since been in the files of the Bureau.

Q. Now, what date have you been talking about now? A. January 25th.

Q. January 25th? A. Yes, sir.

Q. What is the date on that?

A. This exhibit——

Q. Oh, I see. Did you meet with him again subsequent to January 25th?

A. Yes, sir, I met with him on January 26th, 1949, in the office of the Intelligence Unit in Phoenix, Arizona.

Q. And what took place then and there?

A. On that date I handed him Government's Exhibit No. 30 and I asked him if the items contained on that statement were correct, and I asked him if the statement truly reflected his net worth on December 31st, 1945, and he stated that it did, and I asked him if he were willing to sign the statement, and he stated that he was willing.

Q. And did he sign it?

(Testimony of Lloyd M. Tucker.)

A. Yes, sir. [264]

Q. And did you also sign it? A. Yes, sir.

Q. Did Mr. Beals sign it? A. Yes, sir.

Q. Is that true with respect to this other exhibit that you have mentioned? A. Yes, sir.

Q. When was the next time you met him subsequent to January 26th, if you did, Mr. Tucker?

A. On January 26th there is also—on January 26th I also handed him a net worth statement dated December 31st, 1946.

Q. Is that here some place?

A. No, sir, there is no signed statement.

Q. Tell us about what took place there on that date.

Mr. Choisser: Just a minute, if your Honor please.

Mr. Thurman: Conversation, of course.

Mr. Choisser: If there is no signed statement, it wouldn't be material what was related.

The Court: Maybe he had a conversation with the defendant. I don't know.

A. He was handed a net worth statement dated December 31st, 1946, and asked if that truly reflected his net worth on that date. He [265] examined the statement and he stated that his net worth had increased too much, and he wouldn't sign it.

Q. (By Mr. Thurman): Have you got that statement that he didn't sign? Is it in your file?

A. Yes, sir.

Q. Will you produce it?

(Testimony of Lloyd M. Tucker.)

The Court: It wouldn't be admissible anyhow, counsel.

Mr. Thurman: Well, if it wouldn't be admissible, there is no use going into it, then.

The Witness: It is on the table some place, I don't know where.

Q. (By Mr. Thurman): All right. And did that end the conversation that day?

A. No, sir.

Q. All right. Then what conversation did you have subsequent to the time that he refused to sign the statement?

A. I asked Mr. Spriggs if the facts contained on that statement were not correct, and he stated that his increase in net worth was too high, so I questioned him with respect to each of the items contained on that statement, the assets, the depreciable assets, and the liabilities. He agreed that they were all correct with the exception of the cost which he had allocated to [266] the Henshaw Road property. I stated that that was a matter which we had discussed on previous occasions and that up until that time we had been in agreement on it. I asked him why on that date that he stated that the cost which he had allocated to that property was not correct, and he stated—he said, “Well,” he says, “I will tell you exactly what happened.” He says, “If you ever say that I told you, I will say you are a damn liar.” He said, “When I went to file my”—he says, “When I went to file my 1947 income tax return,” he said, “I saw that

(Testimony of Lloyd M. Tucker.)

I was going to have to pay some tax, so," he says, "I just added another \$10,000 to the cost of it to put me in a no tax bracket."

Q. And then what took place?

A. At that time—that was at 4:45 p.m.—I made a longhand memorandum of Mr. Spriggs' statement.

The Court: Did he sign it?

A. No, sir.

Q. (By Mr. Thurman): Those were just notes that you made at that time? A. Yes, sir.

Q. He said he added 10,000 to it?

A. Yes, sir.

Q. Was anything said about his depreciation on that [267] particular piece of property?

A. Yes, sir, he said that when he—he added the \$10,000 to the cost basis so the depreciation which would ordinarily be allowable on a \$40,000 cost basis would place him in a no tax bracket.

Q. Subsequent to that date did you have any conversations or meet with the defendant, Mr. Tucker, with respect to the facts or the issues in this case?

A. Yes, sir, I met him again on January 27th, '49.

Q. And who was present and where did you meet him?

A. In the office of the Intelligence Unit in the Security Building in Phoenix.

Q. And who was present at that time?

A. Mr. Beals and Mr. Spriggs and myself.

(Testimony of Lloyd M. Tucker.)

Q. And did you have any conversations then with him?

A. Yes, sir. On that date I took a sworn question and answer statement from Mr. Spriggs.

Q. Have you got it?

A. Yes, sir (handing a document to counsel).

The Court: What date was that, again?

A. January 27th.

Mr. Thurman: Please mark this purported voluntary [268] statement of the defendant as Government's Exhibit——

The Clerk: 34 for identification.

The Court: Have you seen this, Mr. Choisser?

Mr. Choisser: No, sir, I haven't.

The Court: Did you give a copy of it to the defendant?

A. Yes, sir.

Q. (By Mr. Thurman): Did you?

A. Yes, sir. Oh, yes.

Q. While they are looking at it, did he sign it?

A. Yes, sir.

Q. Who administered the oath?

A. I did.

The Court: How long is that—several pages? Do you have any more papers that you are going to produce from this witness?

Mr. Thurman: I don't believe we do.

Q. Do we have any more there, Mr. Tucker?

A. No, sir.

The Court: I think we will take the regular

(Testimony of Lloyd M. Tucker.)

afternoon recess, and counsel can be reading that; and if you have any more documents, you can show them to him during the recess.

Mr. Thurman: I think that is about all, [269] your Honor. Thank you.

The Court: I see. Very well. We will take our regular afternoon recess while counsel reads that statement.

(A brief recess was taken.)

The Court: Let the record show the defendant is present in person and by counsel, and the jury is present, each one in their place. Proceed.

Mr. Thurman: May I have the last question and answer?

The Court: It related to the statement, if he had signed it, the question and answer statement.

Mr. Thurman: Yes.

The Court: Have you examined it, Mr. Choisser?

Mr. Choisser: Yes.

Mr. Thurman: Oh. That is right, yes. The Government offers in evidence Exhibit 34 for identification.

Mr. Choisser: Which is that—that long statement?

The Court: The question and answer statement?

Mr. Thurman: Yes, your Honor.

Mr. Choisser: Object to it on the ground that it is not material, your Honor. It doesn't show the cost price; it doesn't show anything about [270] the depreciation on the Henshaw Street property.

(Testimony of Lloyd M. Tucker.)

The Court: Well, the Henshaw Street property is not the only thing involved here.

Mr. Choisser: As I understand it, that statement has to deal with the Henshaw Street property. In my hurried examination of it, it shows that it concerns the Henshaw Street property.

The Court: Hurried? I took a recess so you wouldn't be hurried.

Mr. Choisser: That was my conception of it, if your Honor pleases. I think that is true, too.

Mr. Thurman: I think the document will speak for itself. I don't think we should argue the question at this time.

Mr. Choisser: That is right.

The Court: Objection overruled. It may be admitted in evidence as Exhibit 34.

The Clerk: Government's Exhibit No. 34 in evidence.

(Whereupon the document last referred to was received and marked as Government's Exhibit No. 34 in evidence.) [271]

Mr. Thurman: Mr. Tucker, do you remember whether or not you met with Mr. Spriggs, the defendant in this case, and Mr. Beals on the 11th day of February, '49? A. Yes, sir; I do.

Q. Where was that?

A. In the office of the Intelligence Unit, Security Building, in Phoenix.

Q. Did you have any conversation with the defendant at that time and place with respect to any facts or issues in this particular law suit?

(Testimony of Lloyd M. Tucker.)

A. Yes, sir; I did, I handed him a net worth statement dated December 31st, '47.

Q. I notice you use the term "net worth" in the statement, the financial statement. Any difference in those two words, or that phrase, rather two phrases? I hand you Government's Exhibit 29, I believe, for identification. Is that the paper you have reference to? A. Yes, sir; that is it.

Q. What is the difference, if any, I don't know?

A. Any balance sheet or financial statement also contains the net worth of an individual, or if it is a corporation, would also disclose that in the form of surplus and capital. If it is a [272] financial statement disclosing the assets and liabilities, the difference between that is what the man is worth, his net worth.

Q. And what period of time was that particular statement represented?

A. This is for the—for his net worth, his financial statement of December 31st, '47.

Q. Where was the information obtained that went into that?

A. From conversations had with Mr. Spriggs and from investigations of independent recourse at banks, escrow records, records furnished by Mr. Spriggs.

Q. Did he see the contents of that exhibit before he signed it? A. Sir—yes.

Q. That is, did he read it? A. Yes.

Q. Did you have any conversation concerning it before he did sign it? A. Yes.

(Testimony of Lloyd M. Tucker.)

Q. What was it, in substance?

A. He had on December—on January 26th, he had stated that he would not sign a statement which was prepared dated December 31st, '46, and he stated on that date if a financial statement [273] would be prepared disclosing his true asset value in the Henshaw Road property, that he would sign the statement.

Q. And was such a statement prepared?

A. Yes, sir.

Q. And is that the statement you have in your hand? A. This is it.

Q. His signature on it? A. Yes, sir.

Q. Did you see him sign it? A. Yes, sir.

Mr. Thurman: We offer Government's Exhibit Number 29 for Identification in evidence.

Mr. Choisser: We urge the same objection, your Honor, to this financial statement, if your Honor please.

The Court: Let's see it.

(The document was handed to the Court.)

The Court: The same ruling, the objection is sustained.

Mr. Thurman: Your Honor, since the testimony of Mr. Tucker, I believe I should again offer Government's Exhibits 16, 31 and 32 for Identification in evidence. I gave them to the Court. I expect the same ruling, your Honor. [274]

Mr. Choisser: To which we offer the same objection.

(Testimony of Lloyd M. Tucker.)

The Court: I shan't disappoint you, the same ruling. The objection is sustained.

Mr. Thurman: I will not be disappointed either way.

The Court: Very well, I know that.

Mr. Thurman: Mr. Tucker, have I forgotten anything?

Mr. Choisser: You may tell him, Mr. Tucker, if you have or not.

Mr. Thurman: You may cross-examine.

The Witness: No, sir; I never met Mr. Spriggs after February 11th.

Mr. Thurman: Did I ask that question?

The Court: No.

Mr. Thurman: Well, maybe—did you meet him after February 11th?

The Court: He just said he didn't.

Mr. Thurman: I mean, did you meet him after that?

A. No.

The Court: Cross-examine. [275]

Cross-Examination

By Mr. Choisser:

Q. Mr. Tucker, I think you said that Mr. Beals was present during all of these conversations?

A. Yes, sir.

Q. Concerning these exhibits that have been mentioned here, and he heard the same conversations—he had the same conversations with Mr. Spriggs at the same time you did?

(Testimony of Lloyd M. Tucker.)

A. Yes, sir.

Q. You never talked to him when Mr. Beals wasn't there concerning these exhibits?

A. No, sir.

The Court: Was Mr. Beals there the time that you said he told you that he was going to tell you something and if you said so——

A. (Interrupting): Yes, sir; he was there.

Mr. Choisser: Mr. Beals heard that, too?

A. Yes, sir.

Q. When these statements were presented to Mr. Spriggs for his signature, as you testified, was there anything said about he would have a chance to have his auditor go over them and correct and add to them or anything like that if he found any discrepancies? [276]

A. No, sir.

Q. Nothing like that was said at all?

A. Nothing.

Mr. Choisser: I think that is all.

The Court: Step down. The next witness.

(The witness was excused.)

Mr. Thurman: Your Honor, in order to shorten it up I will make an offer to have Mr. Beals fix the amount of tax due for the year on count 2 in the indictment and count 3 in the indictment and also ask him for the amount of income tax that the defendant has failed to pay, and the Court has already ruled on that, and I assume he would rule the same on count 2 and count 3; that is, a summary and the findings by the Deputy Collector of

Internal Revenue would invade the province of the jury and it would not be admissible. Now, that is the Court's ruling with respect to count 1 in the indictment and——

The Court (Interrupting): Yes, I don't think an agent can testify as to what the profit was. He can say—well, I mean, it is his opinion after all. It is expert testimony and I don't think that that can be done. As far as the tax and the rates are concerned, it is a matter of law. If the Government is able to prove that is [277] income, or a certain amount during a certain year and that he failed to report, then the law prescribes what the tax is without the interposition of any Deputy Collector's opinion or calculation.

Mr. Thurman: The Government rests.

Mr. Choisser: Your Honor please, we have some motions to make. I wonder if you might excuse the jury and attend to this for the balance of the afternoon, and at the conclusion of this, it will probably be a little lengthy, might we ask for a recess until tomorrow morning?

The Court: Yes. Very well, the jury is excused until 10 o'clock tomorrow morning. You will remember the admonition. Do you wish to recess to gather your material together?

Mr. Choisser: Yes, a short time, if your Honor will permit it.

The Court: Very well.

(Whereupon a short recess was taken.)

(After recess, all parties as heretofore noted by the Clerk's record being present, except the jury, the proceedings resumed as [278] follows:

The Court: I notice, Mr. Thurman, that no evidence was introduced in support—do you have the bill of particulars before you?

Mr. Thurman: Yes, your Honor.

The Court: On count 1 of the indictment with relation to the fees from Struckmeyer and Struckmeyer, or fees by Claude E. Spriggs.

Mr. Thurman: There was no attempt to do that, your Honor. The proof was lacking.

The Court: I see.

Mr. Choisser: In line with that, if your Honor please, may we move that those items be stricken from the bill of particulars?

The Court: Yes.

Mr. Thurman: The jury won't read the bill of particulars, would they? We just haven't proven it, that is all.

Mr. Choisser: There is no proof offered on it.

Mr. Thurman: That is right.

The Court: There has been no proof offered on it. Did you produce Mrs. Jessie Gomez?

Mr. Thurman: Yes, she was here, your Honor.

The Court: Helen Pitman?

Mr. Thurman: She was here, your Honor.

The Court: And on Page 3, reduction of [279] business income allowed by the examining Internal Revenue agent.

Mr. Thurman: Yes, that was an allowance.

The Court: Very well. All right, make your motion.

Mr. Choisser: Your Honor please, at this time, first, the defendant moves the Court for judgment of acquittal upon count 1 of the indictment, upon the ground and for the reason that the evidence adduced wholly fails to support or substantiate the allegations of count 1. If your Honor would like, I would like to go to the bill of particulars and state what proof has been offered.

The Court: All right.

Mr. Choisser: Your Honor has already mentioned that there was no evidence offered as to the fees collected. That is A and B of the bill of particulars under count 1, and which we moved to strike from the bill of particulars. That is the item of \$464.44.

The Court: Well, I never heard of that procedure before, but I guess it can be done, it can be stricken from the bill of particulars. The motion is granted to strike it from the bill of [280] particulars.

Mr. Thurman: We stipulate that it may be done.

Mr. Choisser: Now, the next, if your Honor please, is Sub-section A to C, "Unreported taxable capital gains consist of the following:" The first item of "Profit on the sale of interest in the Hi-De-Ho." Your Honor will remember the testimony was, in substance, that Mr. Spriggs paid \$5,000.00 for it, that there is a check in evidence in the sum

of \$491.00. Mr. Brown testified that he repaid him \$4200.00 and \$250.00 a month for some seven months, which amounted to approximately \$1750 during '44, which does not sustain the allegations of the bill of particulars in Item "A" in any particular. That was the uncontradicted testimony.

The Court: Well, that would have been 5950.

Mr. Choisser: 5950 income, that is right, if your Honor please, but, under these two sets of figures it would have been an investment of \$5,491.00. Then, if your Honor please, you will remember that Mr. Brown also admitted that he borrowed \$1500.00 in December, '44, that he didn't repay for some time back until March of the following year which would— [281]

The Court (Interrupting): Which would what?

Mr. Choisser: Which would either, if your Honor please, decrease the amount of money owed by Mr. Brown during that time, or in any event, the most that could be said of it, there was still only a capital gain of some \$400.00 that was not recovered during the peirod of the remainder of the year '44.

The Court: Well, even if that capital gain of \$400.00, it still—the charge could still be made as contained in count 1.

Mr. Choisser: Yes. Just for an instance, then, let's either use \$400.00, leave that in and I will show you where we go from there. This profit on the sale of Lot 13, Block 1, there was no evidence submitted on that, to Mr. Stuart Bailey.

The Court: That is why you—

Mr. Thurman (Interrupting): Struck it out. We couldn't put the cost price in, if I remember correctly, isn't that correct?

Mr. Choisser: You say you did?

Mr. Thurman: My recollection is that we were unable to do it.

The Court: Yes, there was no—that was [282] the property in Safford, Arizona?

Mr. Choisser: Yes, business property.

Mr. Thurman: 1509 Something.

The Court: Yes, there was no evidence on the cost price of that and, therefore, there is no evidence to substantiate that Item "B" showing that that was a profit or unreported profit.

Mr. Choisser: We therefore move to strike that item, Item "B" on count 1 of the indictment in the bill of particulars.

Mr. Thurman: \$908.28 stricken. No objection.

The Court: All right.

Mr. Choisser: Now, the profit on the sale of real estate to Mr. Brown. There was no evidence of the cost price of that property adduced that I remember of. I think I am correct, nothing whatsoever; no evidence offered.

The Court: That is the property here in Phoenix?

Mr. Choisser: 756 East Portland.

The Court: Where he lived?

Mr. Choisser: Yes.

Mr. Thurman: That is the Struckmeyer deal.

The Court: Well, there was no evidence [283]

from Mr. Stuckmeyer this morning as to the amount of money——

Mr. Choisser: It was a different Struckmeyer, if your Honor please. It was the son that testified this morning.

The Court: The only testimony he gave this morning was concerning statements by the defendant.

Mr. Choisser: That is right.

The Court: He gave no testimony on the cost, and that was property which, under the stipulation, was originally purchased from Struckmeyer.

Mr. Choisser: This is a different Struckmeyer, if your Honor please. It was the young man's father, but there was no evidence produced as to the cost price of that, that is true.

Mr. Thurman: I don't agree with that. We put in the record of agreement and I read the consideration into the record. That was the purpose of it.

The Court: Oh, that was the property on Portland?

Mr. Thurman: Yes, sir. I think if you will bear with me, that he was to pay \$3,000.00 for it, for this property under the agreement, and he paid a thousand dollars down. Now, that is a [284] matter of record, and three months later he sells it for a profit of \$1500.00; two weeks later he sells it for a profit of \$500.00, that he sold it from the sum of \$1500.00, and Mr. Brown took over the balance of the contract.

Mr. Choisser: If your Honor please, we read

in what the deed showed. We didn't show what the true consideration of what passed. That is what I am getting at.

The Court: Well, there is the presumption there that the deed correctly reflected your stipulation. Your written stipulation went so far as to show that there was that sale and that the total purchase price there was \$3,000.00 payable a thousand dollars in cash on October 15th, '44.

Mr. Choisser: Well, may we pass that for a minute, then, if your Honor please, and go to another item?

The Court: Yes.

Mr. Choisser: Now, those are two items we have left for consideration, at least, in unreported taxable gains, was \$400.00 on the sale of interest in the Hi-De-Ho, if we consider that for a minute, and the \$500.00 to Mr. Brown.

The Court: Yes. [285]

Mr. Choisser: Now, going to the next page, "Interest received from Mr. Otis Sasser," \$500.00. If your Honor please, there was no competent evidence to show that that was interest. Mr. Sasser said he gave him \$500.00.

The Court: Oh.

Mr. Choisser: You remember Mr. Sasser's testimony?

The Court: Sasser was the man who won this \$3,000.00 in a poker game?

Mr. Choisser: He borrowed \$3,000.00 from the defendant at one time.

The Court: Yes, and then he had \$3,000.00 in cash?

Mr. Choisser: That is right.

The Court: Well, I don't know that it had to be interest.

Mr. Thurman: Use of the money.

The Court: As income.

Mr. Thurman: Use of the money.

The Court: It was income.

Mr. Choisser: Your Honor please, we put in evidence that there was other checks, other loans. He testified there was other loans made during that time and repayments at some time. As a matter of fact, there was some checks in [286] evidence to Mr. Sasser.

The Court: That is correct, and that would require you to weigh the evidence and decide whether or not he was telling the truth and that is for the jury to decide.

Mr. Choisser: Your Honor will recall that Mr. Sasser said that there was nothing said about interest, nothing said about what Mr. Spriggs wanted in return for this loan of money.

The Court: Yes, I remember it.

Mr. Choisser: He merely said, "I gave him some money," that is the gist of it, "I gave him some money." He might have been grateful, he might have gone and won \$50,000.00 off of this 3,000, I don't know.

The Court: Also, Mr. Spriggs might have been worried about his income tax, too.

Mr. Choisser: That is right, but what I am getting at—

The Court (Interrupting): But that is up to the jury. The question is whether or not the jury believes Sasser.

Mr. Choisser: Then at this point, let's leave that \$500.00. Interest paid by Mrs. Jessie Gomez. If there was any testimony—now, there was interests of \$200.03 paid. [287]

Mr. Thurman: We will so stipulate.

The Court: All right.

Mr. Choisser: If your Honor will please go further in the record, it shows in the stipulation this was the sole and separate property of Evelyn Lee Spriggs. The property was acquired by her.

The Court: Under this stipulation made originally at the beginning of the trial, that is the farm, that is correct?

Mr. Thurman: We don't argue about that, that is correct. We will assume that it was, it was her personal property, but we are bothered here by the '44 income tax return of the defendant, Claude E. Spriggs, and whether it is true or not, and in this particular tax return, if I am correct—see that I am, here, because I don't want to make a misstatement, do they not show income from that particular property of Mrs. Spriggs?

The Court: It would not be criminal if he did show income in his return that came to somebody else that he was not obliged.

Mr. Thurman: Did he use the depreciation on

her property to cut down income tax? That is in here. [288]

The Court: That is, on the farm?

Mr. Thurman: No, that is on the Safford office.

The Court: We are talking about the farm now. Under this stipulation, Item Number 3, "Sale by Eldon Palmer to Evelyn Lee Spriggs on May 18th, 1943, of a farm situated north of the Gila River in Graham County." That was the farm that was sold to Jessie Gomez?

Mr. Choisser: That is right.

The Court: And the stipulation at the beginning of the trial was that it was acquired by and owned by Evelyn Lee Spriggs as her separate property?

Mr. Thurman: Oh, yes. Well, I am not going to stipulate to that.

The Court: So that would not be chargeable to this defendant in a criminal case.

Mr. Choisser: May that be stricken from the bill of particulars?

The Court: That may be stricken.

Mr. Choisser: Now, the next item is interest paid by Helen Pitman on various dates during the year 1944. There was no evidence whatsoever adduced, your Honor. If you will remember, Mrs. Pitman said she didn't know, it was handled [289] by some company. The records were offered in evidence and they were refused.

Mr. Thurman: Yes, under the Court's ruling, why, we didn't prove it.

Mr. Choisser: That is right.

The Court: All right.

Mr. Choisser: May that be stricken from the bill of particulars?

The Court: That may be stricken.

Mr. Choisser: Item "C." Now, we have interest paid by Mr. Wilburn Brown during each of the months June to December, '44, an item of \$175.00. Your Honor will recall Mr. Brown testified it was 156 some odd dollars on direct testimony.

The Court: Well, it could be reduced to 156.

Mr. Choisser: Yes.

The Court: But the Government does not have to prove these precise amounts.

Mr. Choisser: I agree with you. Now, if your Honor please, that is the total unreported income or capital gain or interest which amounts, I think, roughly, now, of \$1,556.00. The income from that year shows a net loss of \$147.25 which has not been challenged. If those amounts were [290] in the income and the defendant was entitled to his deductions as shown by the exhibit, his income tax, then he still would owe no tax and would still have a loss for that period of time.

The Court: That is to say, that is \$1657.00 total?

Mr. Choisser: That is right.

The Court: Is that correct?

Mr. Thurman: Well, it may be from his figures, but I don't agree to that.

The Court: No, 464 is out. \$2,407.92 received that year from profit on the interest is now reduced, under the testimony, to \$491.00.

Mr. Thurman: Which one is that? I don't follow you.

The Court: That is on Page 1.

Mr. Thurman: On Brown?

The Court: Interest in the Hi-De-Ho Bar.

Mr. Thurman: I can't follow that under any theory.

Mr. Choisser: He received \$5900.00 back from Brown during '44 and he paid out——

Mr. Thurman (Interrupting): Why don't you let me talk, you have been talking and I have got to answer you. I have the figures for all of the testimony. The purchase price by Mr. Spriggs was [291] \$5,000.00, there is no dispute as to that.

The Court: Then he spent whatever sum is was, \$5,400.00.

Mr. Thurman: I have got that all down here. I have got that evidence shown here, a thousand and something, and there was \$500.86 as reflected by the testimony of Mr. Brown and the testimony of Mr. Pomeroy, and adding those three figures up you get \$5,992.08. This profit is added to the cost—he is given credit for that because it was profit that went into the business that was not taken out, so, certainly, that goes into his cost, and it is a just way to treat it, and the evidence is undisputed that he received \$8,400.00.

The Court: No.

Mr. Thurman: Yes, your Honor, the undisputed evidence.

The Court: It is not that he received it in '44. The testimony was that the sale price was \$8,700.00,

that there was \$300.00, some allowance on a Ford, so it was \$8,400.00.

Mr. Thurman: Paid during the year '44.

The Court: No, no, I don't think so, counsel. He said that he allowed him a thousand dollars that Spriggs owed him and paid him [292] \$3,200.00 in cash, so he got \$4,200.00 in cash and he paid him \$250.00 a month for, whatever seven months would amount to, \$1750.00 for the remainder of the year, so during the year '44 his total repaid was \$5,950.00, not \$8,400.00.

Mr. Thurman: This still has to be reported in the year, because it is over 30 per cent of the price. He is not entitled—it has got to be reported at that time.

The Court: As far as reporting it is concerned, counsel, you are not charging here with the failure to report it, you are charging him with the failure to disclose his profit and you are charging that he made the \$2,407.92 profit during that year. In other words, his tax return is on a receipt basis and he did not receive that much money during that year. Now, the testimony of Mr. Brown was that he received the balance of it, but he repaid the balance of the money the next year.

Mr. Thurman: Which was \$1,500.00 they spoke of and argued it and you deducted it, as I thought, from the amount that Mr. Spriggs would owe Mr. Brown. The \$1,500.00, on a redirect question by me to Mr. Brown, I said, "Did it have anything to do at all with the payment for [293] the sale of

the Hi-De-Ho?" and he said, "No, it was in December, '44."

The Court: And he repaid it.

Mr. Thurman: Huh?

The Court: And Brown repaid it.

Mr. Thurman: I forget, whatever it was, had no transaction, nothing to do with the sale of the Hi-De-Ho.

The Court: That is the point that counsel is making. In other words, you are proceeding on a cash received basis for the year '44 and he did not receive \$8,400.00. The testimony is that during that year that he did receive \$4,200.00, plus \$250.00 payments for those number of months, or a total of \$1,750.00 for 7 months, or received \$5,950.00. However, assuming, and there is testimony here that there was a profit of \$500.00 from the Hi-De-Ho which was not reported, that would be \$491.00, plus \$500.00——

Mr. Choisser (Interrupting): And plus \$5,000.00, the initial purchase price.

The Court: I am talking about what the Government is substantiating here. In other words, on count 1 they have produced sufficient proof concerning which reasonable minds might differ of \$991.00, and \$500.00 and \$156.00 and \$500.00 [294] from Sasser, so that is a total of about \$2,100.00, instead of the figure you gave of \$1,657.00. Now, if the jury believes that there was a payment of \$1,500.00; that is to say, what was testified to was a loan in December, '44, and was a repayment to Spriggs by Brown probably they might believe

that, I don't know, then it would be up that much. So, let me see, now.

Mr. Choisser: Your Honor please, that is the payment of \$1,500.00 was from Mr. Spriggs to Mr. Brown, not the other way.

The Court: Oh, Spriggs loaned Brown \$1,500.00?

Mr. Choisser: That is right.

The Court: Yes, then that could be——

Mr. Choisser: And that is from Mr. Spriggs to Mr. Brown.

The Court: Well, taking the evidence in its most favorable light to the Government in indulging all presumptions against the maker of the motion, it seems to me the most that can be spelled out of the evidence in support of count 1 is a total of unreported income of \$2,147.00, made up of \$491.00—wait a minute here, that is not 491—oh, yes. He paid out \$5,491.00 and in the year '44 received \$5,950.00, so the difference there [295] would be \$459.00. The \$500.00 profit which Mr. Brown testified was made during the period of partnership, which the jury may believe or may not——

Mr. Choisser (Interrupting): Would it make a difference, if your Honor please, you remember further Mr. Brown's testimony that Mr. Spriggs never received it. That was put back into the business.

The Court: It was, nevertheless, a profit.

Mr. Choisser: I don't know how it would be figured, I will be frank to confess. He did say Mr.

Spriggs didn't receive it. You remember he said it went back into the business to buy stock.

The Court: Well, you can argue that to the jury. As I say, indulging in all of the presumptions against the maker of the motion and taking the evidence offered by the Government in its most favorable light to the Government which the Court must do in such a motion as this, it is possible the jury will believe it was a profit and was income, so there is that \$500.00, that \$500.00 which may be considered as profit on the Portland Street place and the \$500.00 from Mr. Sasser which the jury may consider, and \$156.00 interest, or a total of \$2,115.00 unreported [296] income for the year '44 under the evidence. Now, the question is whether or not, taking his loss and subtracting \$147.25 from that, his income would be \$1,967.75 that year, his net income. Would he then have had to pay a tax? That is the question.

Mr. Choisser: Then according to the exhibit and his dependants listed, he would be entitled to the sum of \$2,000.00 deduction, according to the exhibit in evidence. He has his wife and two children.

The Court: What do you have to say to that, Mr. Thurman?

Mr. Thurman: Only for the sur-tax he would be entitled to.

The Court: Well, you consult with your experts there, assuming that his net income was \$1,967.75, would he have had any tax that year?

Mr. Choisser: May I have that figure again?

The Court: \$1,967.75 is the way I figure for '44.

Mr. Thurman: Then his wife's exemptions would come off in his own separate return.

The Court: No charge is made here that there were any deductions that were wrong, and the only thing to determine would be the inside of the—that is on [297] the back page.

Mr. Beals: Page 3, sir?

The Court: Oh, yes, the total computation. Well, you would add \$1,967.75 to \$1,059.00, wouldn't you? There is adjusted gross income.

Mr. Beals: Yes, sir.

The Court: \$3,026.84, from which you would deduct \$1,206.34, so that the item appearing on Line 3, instead of being \$147.25 loss, would be \$1,820.50.

Mr. Beals: Yes, sir.

The Court: Net income.

Mr. Beals: Yes, sir.

The Court: From which he would be entitled to deduct \$2,000.00.

Mr. Beals: There is the question. If this is his separate return, then he would not be entitled to claim his wife. She would be required to file her own return.

The Court: Well, there is not made a charge of fraud in the bill of particulars, so I don't see how I can take that into consideration. In other words, I have got to assume that all of these other things are correct and that the one item in the bill of particulars that is wrong is \$147.25 loss which should

be, the way I [298] calculate it, \$1,820.50, and there not having been any charge made of falsity with relation to the bill of particulars, with relation to the asserted wrongful claim for exemption, the Court must assume that the Government did not intend to rely on it and did not warn the defendant sufficiently in advance so that he could defend. That being the case, it looks to me like you have not proven any case in count 1.

Mr. Thurman: I don't remember exactly the prerequisite of the demand for a bill of particulars, whether it included that. We gave him a breakdown of the things that we claimed, the elements——

The Court: The element of fraud?

Mr. Thurman: I had it left out, yes, and that is what they asked for. I didn't think the bill of particulars was as broad to furnish them with all of the testimony that, or evidence that we might have, and the Court, I believe, passed upon this bill of particulars. I forget the exact fact situation, whether we furnished it or whether Judge Ling ordered it and approved it, but it is not my understanding, I may be in error, but I always thought where a prima facie case is made, if one has been made, that we then can [299] go in and show other acts even though not included in the indictment or in the bill of particulars, to show intent, and all of those things. I don't think we are bound by this. I may be in error. I don't understand the rule of evidence in criminal cases——

The Court: Yes, in an income tax case you can show similar transactions for other years to show

intent, but here, the charge is that he wilfully and knowingly attempted to evade his income tax by filing and causing to be filed with the Collector of Internal Revenue a false and fraudulent income tax return. It must be shown how it was false and fraudulent. You don't think it was false and fraudulent because he claimed exemption of \$2,000.00 and was only required to claim \$1,500.00?

Mr. Thurman: We allege it in the indictment.

The Court: No, you don't.

Mr. Thurman: We allege it in substance how much he was supposed to pay and what he didn't pay.

The Court: All of your calculations had nothing to do with that. Your whole bill of particulars does not say anything about it. You arrive at the same figures here in the bill of [300] particulars that you have in your indictment, you have entirely different items.

Mr. Thurman: It is our understanding he only has a thousand dollars exemption. Under normal tax, personal income tax return he would owe a tax of 24.61½.

The Court: You mean, if instead of 2,000 tax there was a thousand dollars?

Mr. Beals: No, sir. The \$2,000.00 deduction for sur-tax computation is correct, however, for a normal tax deduction it would only be 1,000, 500 for each, husband and wife.

Q. Well, they have two children here.

Mr. Beals: But they don't get the normal tax exemption for the children.

The Court: Well, all right now, wait a minute.

Mr. Beals: Reading on Line 8: "Enter your normal tax exemption," and so on.

The Court: Well, he is still entitled to deduct \$2,000.00 sur-tax exemption.

Mr. Beals: For sur-tax computation.

The Court: All right, so that still—he still shows a net loss, but on top of that he is also entitled to enter his normal tax exemption of what, 500? [301]

Mr. Beals: No, sir. I think there is a misunderstanding. His income on Line 3, according to the computations—from your computations, he had \$1,820.50.

The Court: Yes.

Mr. Beals: All right. Now, we have to compute the normal tax and sur-tax. Now, in the sur-tax computation he has four sur-tax exemptions of \$500.00 each making a total of \$2,000.00 which would exceed the amount of 18—

The Court: So he has no sur-tax.

Mr. Beals: Now, we compute the normal tax beginning back with the \$1,820.50.

The Court: On Line 7.

Mr. Beals: Line 7. Now, the figure you enter on Line 3 above.

The Court: That is \$1,820.50?

Mr. Beals: Yes, sir; less \$500.00 for each taxpayer, and assuming here that we have two taxpayers, then it would be a thousand dollars, the balance subject to normal tax of \$820.50, net liability of 24.61½.

The Court: Well, that is too great a disparity, in my judgment, between the amount alleged in count 1 and the tax which we calculate to be due as to invalidate all presumptions in [302] favor of the Government. I realize that the Government is not required to prove all of these things, but when the disparity becomes as great as it is, \$24.61 and \$854.91, it would be a miscarriage of justice to permit any verdict to stand. The motion for judgment of acquittal as to count 1 is granted.

Mr. Choisser: Now, if your Honor please, we move for judgment of acquittal as to count 2 of the indictment, upon the ground and for the reason that the evidence does not substantiate the allegations of count 2 of the indictment.

Mr. Thurman: Count 1 was dismissed, was it, your Honor?

The Court: Motion for judgment of acquittal was granted as to count 1.

Mr. Choisser: Now, going on to count 2, and for the same reason, and under "A," taxable profit on sale of real property in Phoenix to Stephen B. Rayburn. There was no purchase price whatsoever assigned as to that item in the bill of particulars, Item "A" under count 2.

The Court: That is property——

Mr. Choisser (Interrupting): Property purchased from Wilkinson.

The Court: That is correct, Mr. Thurman, [303] there was no evidence showing the amount of money that the defendant paid for the property.

Mr. Thurman: Well, I understand, under the Court's ruling, that is correct.

The Court: Well, can you spell anything out here where there was evidence to show?

Mr. Thurman: Well——

The Court (Interrupting): Wilkinson was not produced. There was some escrows which were produced in here, but they were not admitted in evidence because they were not connected with the defendant. Nobody was produced to identify his signature. All of the three men produced from the Title Company testified they didn't know him.

Mr. Thurman: That is right. I thought probably the name of the defendant being so close to Claude E. Spriggs that it might be a basis for admissibility of the documents, especially, your Honor, when the property was subsequently sold by Mr. Spriggs, the same property.

The Court: Well, it was sold by Claude E. Spriggs, there isn't any doubt about it, but the record shows absolutely nothing to tie this defendant to that person.

Mr. Thurman: It has the name "Claude E. [304] Spriggs" on the escrow papers.

The Court: Well——

Mr. Thurman (Interrupting): And the same property, he must have had title. The Court has ruled on it. We had that pretrial——

The Court (Interrupting): Yes, but I think, counsel, that you would feel badly, if, in a criminal case, that kind of evidence were permitted.

Mr. Choisser: May it be stricken from count 2

of the bill of particulars, the amount of \$1,958.21?

The Court: Stricken.

Mr. Thurman: That is "A"?

The Court: There wasn't even any showing that the person from whom he purchased the property was not available, and dead or anything.

Mr. Thurman: Well, we were unable to get him, if any one of them are dead, but the fact is, the escrow agent didn't know Spriggs.

The Court: Well, all right.

Mr. Choisser: Now, as to Item "B," if your Honor please, the property in Safford, Arizona, under our stipulation that shows that that was in the separate property of Evelyn Lee Spriggs.

The Court: Is that what you call the business property? [305]

Mr. Choisser: That is right.

The Court: Wait just a moment, now. Which item is that in the written stipulation?

Mr. Choisser: Item 8 and 9, if your Honor please, deed from Marion Lee to Evelyn Lee Spriggs, and sale——

The Court (Interrupting): Sale by Jessie Udall to Marion Lee, 7 and 8, Marion Lee to Evelyn Lee Spriggs, December 24th, 1938; sale by Claude E. Spriggs, and the testimony was Evelyn Spriggs.

Mr. Choisser: That is right.

The Court: And the stipulation was that the property likewise was the separate property of Evelyn Lee Spriggs.

Mr. Choisser: That is right.

Mr. Thurman: I might call the Court's atten-

tion that I am still interested now in the '46 income tax return that is used by the defendant under his personal name and the use of depreciation allowable on that property, and that is the evidence too. I can't see how he gets away from bringing his wife's property into it, why it is not a joint return.

The Court: Well, that might be evidence, might be considered and argued as evidence of an [306] attempt to defeat and evade income tax later by taking a deduction that belonged to somebody else, but that does not make a taxable profit. It would make a wrongful deduction.

Mr. Thurman: Well, as I said, I was under the impression those things could go into the evidence regardless of the bill of particulars. I was wrong, probably.

The Court: Well, you stipulated it was separate property.

Mr. Thurman: That is right, and was used by him in his income tax return as depreciation.

The Court: But that still would not make a profit to him. It still might be an effort on his part to defeat and evade income tax by taking a depreciation allowance of somebody else's property to which he was not entitled, but it wouldn't make profit to him.

Mr. Thurman: Oh, no.

The Court: So that item is out.

Mr. Choisser: And Item "B" of count 2 may be stricken?

The Court: Stricken.

Mr. Choisser: Now, we come to Item "C" settle-

ment of conditional sales contract. I think your Honor will remember that Wilburn Brown, at [307] one time, testified he gave him this \$500.00 to keep him out of his hair, I believe is his exact words.

The Court: Well, it is on the check. Your motion to strike that is denied.

Mr. Choisser: Then we have "Depreciation overstated, \$1,150.00." If we go back to our same reasoning now, from which I assume we can't under the Court's ruling, that is only a total, then, of \$1,650.69. That is the same deduction to apply as before of \$2,000.00.

The Court: Let me see the '46 return. Now, which was the Safford property on the depreciation?

Mr. Beals: On the '46 return, sir.

The Court: Yes, adobe or frame?

Mr. Beals: Cement, 1939.

The Court: Oh, yes. All right. Even assuming, counsel, that on the 1150 and the 500, that would be \$1,650.00, that it would not bring it up to taxable income that year, nevertheless, I think in view of the fact that there is the charge of fraud, and that the testimony shows that in his '46 return he attempted to claim depreciation on his wife's property, which was only \$125.00, it, nevertheless, may be considered by the jury. I don't think you should be entitled [308] to judgment of acquittal on count 2.

Mr. Choisser: Well, as I say again, if your Honor please, the '46 returns have not been challenged in that manner. They have not raised that

question at all as to whether or not he was entitled to take this deduction, and it was not in the indictment, it is not in the bill of particulars and, as your Honor stated, it might be something else, but we are confronted with the instant case at bar, and even if that should be erroneous and should not be in there, it still does not bring it up to where he would be required to pay any tax, even if that item was not in there at all.

The Court: You mean, even disallowing the depreciation of \$125.00?

Mr. Choisser: That is right, he still would not be required to pay any tax, so it could not be used as a basis for any fraud because it would not amount to that amount as a matter of law under our computations.

The Court: Well, let's see.

Mr. Thurman: Mr. Choisser says that there would not be a tax in '46. Maybe we should check against it and shorten it up.

Mr. Choisser: Well, because you only [309] have——

The Court (Interrupting): Well, Item "A," there, the first one on Page 2, of 1946, is stricken, because there was no purchase price shown for the Rayburn sale of property. Item "B" was stricken because that was the property, the separate property, under the stipulation, of Mrs. Spriggs, which leaves Item "C," \$500.00, and also "Depreciation overstated" of \$1,150.69, or a total of \$1,650.69.

Mr. Choisser: And a loss of \$350.61 on the top of Page 3.

The Court: From which you deducted that from the \$1,650.69, is \$1,300.08. Now, you add to that the item of depreciation which he claimed on the——

Mr. Choisser (Interrupting): '46 return.

The Court: On the '46 return, on the Safford property.

Mr. Thurman: \$1,425.08.

The Court: No.

Mr. Choisser: 125——

The Court: \$125.00, is that right, Mr. Beals?

Mr. Beals: \$125.00.

The Court: Or \$1,425.08.

Mr. Choisser: The same exemptions are claimed for [310] '46 as we claimed previously, the same dependants.

The Court: There is no complaint that the deductions made, such as interest paid, taxes and doctor bills are wrong, so what you would do, you would add \$1,425.00 to the item on Line 1 of \$1,548.00, is that correct?

Mr. Beals: Yes, sir.

Mr. Choisser: That is right.

The Court: \$2,973.75. Deduct \$1,899.28, am I correct, you still deduct the 1899, is that correct, Mr. Beals, you have the form there before you?

Mr. Beals: What is the total amount for Line 1?

The Court: \$1,548.67, plus \$1,425.08.

Mr. Beals: \$1,425.08.

The Court: That was \$1,300.00 plus 125, which he wrongfully claimed, and then instead of having "None," he would have a net income of \$1,074.47, is that correct?

Mr. Beals: That is right, and there would be no tax on that return.

The Court: The motion for judgment of acquittal as to count 2 is granted.

Mr. Choisser: We next move for judgment [311] of acquittal as to count 3 in the indictment, upon the grounds and for the reasons that the evidence adduced does not sustain the allegations of count 3 of the indictment, and to proceed with that, we have Item "A" in the bill of particulars on count 3, which is the sale of a piece of property to one, Jesse Arreola. As a matter of fact, all of these are in the same category. There was no evidence at all as to the purchase price on any of these three.

The Court: Lots 7 and 8.

Mr. Choisser: Lots 7 and 8, Block 15.

The Court: Wait a minute, wasn't there some testimony as to the purchase price of Lots 7 and 8? Let's see, in his written statement, question and answer statement, didn't you cover that?

Mr. Choisser: Not as to the condition it was in on the date '47, as I recall, I think, nothing, he said, was paid for the two lots, if I recall. Mr. Tucker said it is not covered.

The Court: Oh, that was 47 and 48?

Mr. Choisser: Yes.

The Court: The Eubanks tract, but there is no reference of any sale of Lots 47 and 48.

Mr. Choisser: Lots 7 and 8, Block 15, Collins Addition. [312]

The Court: Yes.

Mr. Thurman: Mrs. Arreola, she was not sub-

poenaed. Why, I don't know. She wasn't here to testify.

The Court: There is nothing here to show that he sold it or the price that he sold it for.

Mr. Thurman: Yes, that he sold it, but we weren't able to show by the records of the Title Company the initial price that Mr. Spriggs paid for it, is that correct?

The Court: All right, that is stricken.

Mr. Choisser: Now, the same, I think, if your Honor please, applies to Item "B." That was the sale of Lot 5 to Howard M. Vandenberg. That concerns the acquisition of that property from a Mrs. Fisher, I believe, and there is no evidence whatsoever concerning Mrs. Fisher or of that transaction.

The Court: Do you recall any evidence as to the purchase price of that property?

Mr. Thurman: No, the same fact situation, we relied upon the escrow. That is my recollection.

The Court: Well, that will be stricken, then. And the depreciation. Let's see, then, take the '47 return, and on Line 1, the figure, [313] \$2,601.32, you add the depreciation overstated of \$2,978.60, so that figure would then be \$5,579.91.

Mr. Choisser: Your Honor, may I be heard on that addition of depreciation overstated, \$2,978.60? I again submit that there is no competent evidence from which that figure can be produced in any particular.

The Court: There is evidence here upon which reasonable minds might differ.

Mr. Choisser: But, as to the amount, if your

Honor please, we would have to have some amount to enter in this computation.

The Court: That is a matter of argument. I think it might be almost any amount. In any event, this is the amount the Government has chosen to stand on, and there is sufficient evidence to believe the jury would have to reach that conclusion, so that would be added to that item and then you would deduct the figure there of \$773.15, so the total of Line 3 would then be \$4,806.76, is that right?

Mr. Beals: 77.

The Court: From which you would deduct \$2,000.00, so that instead of Line 5 being "None," it would be \$2,806.76, is that correct? [314]

Mr. Beals: Yes, sir.

Mr. Choisser: Now, before we go, may I point out the error of \$100.61. I don't know whether that is being included or not. I think we should be given credit for the last item on the bill of particulars in count 3.

The Court: All right, we will deduct \$100.61 from this last figure, so that that figure, instead of being "None," would be \$2,706.15, upon which there would be a tax of—about what would the tax be?

Mr. Beals: Subject to a recheck, \$527.58.

The Court: The motion for judgment of acquittal as to the 3d count is denied. The defendant will be on his proof. We will resume at 10 o'clock tomorrow morning as to the 3d count only.

(Whereupon a recess was had at 4:45 o'clock p.m. of the same day.) [315]

(10 o'clock a.m., November 16th, 1951, pursuant to adjournment, all parties as heretofore noted by the Clerk's record being present, the trial resumed as follows:)

The Court: The record may show the defendant is present in person and by counsel and the jury is present and each one in place.

Gentlemen of the jury, on counts 1 and 2 of the indictment, motion for judgment of acquittal was granted by the Court, which means the defense is on his proof as to only count 3. For that reason, you will disregard in your deliberations and consideration the charges and allegations contained in count 1 concerning the calendar year '44 and the tax return in '45, and the charges contained in count 2 for the calendar year '46, the return filed on or about the 10th day of January, 1947. There remains the count 3 relating to the income tax return filed on the 7th of January, 1948, for the taxable year '47.

Do you wish to make an opening statement, Mr. Choisser.

Mr. Choisser: We reserve our opening statement. I wonder if your Honor will consider instructing the jury as to the items in the bill [316] of particulars that they are only concerned with now. There are some of those, I believe, there was some testimony offered to the jury on those.

The Court: Yes, that is right. In connection with count 3, the bill of particulars furnished by the Government asserted that the claimed income was \$7,048.95, consisting of the following items:

“Unreported taxable capital gains:

“(A) Taxable portion of profit on sale of Lots 7 and 8, Block 15, Collins Addition, Phoenix, Arizona, to Jesse Arreola,” an item of \$1,698.15.

No evidence was produced by the Government whatsoever on that item, neither Jesse Arreola, showing the cost price or the sale price, consequently, that item has been stricken from the bill of particulars, and the evidence concerning that you are to disregard except as I may instruct you later in the instructions.

“(B) Taxable portion of profit on sale of Lot 5, Eastwood Place, Phoenix, Arizona, to Howard M. Vandenberg,” \$544.64.

You will recall that Mr. Vandenberg testified as to what he paid for the lot to Mr. Spriggs, but there was absolutely no testimony introduced or any evidence of any kind showing what the [317] defendant had originally paid for the lot, consequently, the item was stricken, or a total of \$2,242.79.

There remains for consideration in connection with the trial the following item described in the bill of particulars as “Depreciation overstated.” This item consists of the overstatement of depreciation by the defendant is the result of his having falsely represented the cost of the property located on Henshaw Road, Phoenix, Arizona, on which he claimed excessive depreciation in the amount of \$2,978.60.

Mr. Choisser: May I have one moment, if your Honor please.

The Court: Yes.

Mr. Choisser: Your Honor please, we will reserve our statement to the jury.

The Court: Very well. [318]

(After recess, all parties as heretofore mentioned being present, the trial resumed as follows:)

The Court: The record may show the defendant is present in person with his counsel, and the jury is present and in their respective places. This is the time for argument.

Mr. Choisser: I wish to renew my motion on behalf of the defendant for judgment of acquittal.

The Court: Denied.

(Whereupon, counsel for both sides presented their closing arguments to the jury, after which, the Court instructed the jury, as follows:) [324]

COURT'S CHARGE TO THE JURY

The Court: Gentlemen of the jury, the instructions will be rather long. They will be divided generally into three sections; general instructions applicable to the matter of receiving evidence; the next section will be treating the particular statute involved here, and then there will be some closing instructions.

In these instructions, as I shall give them to you, it is your duty to follow them, and it is your exclusive province to determine the facts in this case

and to consider and weigh all the evidence that has been introduced.

The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with these rules of law as I shall state them to you.

Now, if in these instructions any direction or idea be stated in varying ways, you must remember the law is not an exact science, or if a subject matter is treated first or last, no emphasis is intended by me and none must be inferred by you. For that reason you are not to single out any certain sentence or any individual [325] point or instruction and ignore the others, but you are to consider all the instructions as a whole and to regard each one in the light of all the others. Nor are you to regard any repetition or partial repetition of an instruction or an idea *contain* in any instruction as a special emphasis on that instruction.

Facts are established by evidence, and evidence is of two kinds. It may be either direct or indirect. Direct evidence is that which proves a fact directly in dispute, without any inference or a presumption, and which in itself, if true, conclusively establishes the fact in issue. Indirect evidence, sometimes called circumstantial evidence, is that which tends to establish a fact in dispute by proving another fact which, though true, does not of itself conclusively establish the fact in issue, but which affords an inference or a presumption of its existence.

The law makes no distinction between circum-

stantial evidence and direct evidence in the degree of proof required for a conviction. In other words, circumstantial evidence is on no different or lower plane than any other form of evidence. The law only requires that the jury shall be satisfied beyond a reasonable doubt and [326] to a moral certainty by evidence of either the one character or the other, or both, before voting for conviction of an accused person.

If, upon consideration of the whole case, you are satisfied to a moral certainty and beyond a reasonable doubt of the guilt of the defendant, you should so find, irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence.

The rule concerning circumstantial evidence does not permit you as jurors to indulge, however, in speculation or surmise or conjecture or guess work in order to supply any element of the offense alleged by the Government in this case to have taken place where proof of such element does not appear beyond a reasonable doubt and to a moral certainty. Speculation, surmise, conjecture or guess work can never be substituted in lieu of proof in order to justify the conviction of an accused person.

Indirect or circumstantial evidence is of two kinds, namely, presumptions and inferences.

A presumption is a deduction which the law expressly directs to be made from particular facts, and a presumption is evidence, and unless declared by law to be conclusive, and there are [327] no conclusive presumptions in this case, a presumption

may be controverted by other evidence, direct or indirect, or by another presumption, but unless so controverted, the jury is bound to find according to the presumption. I will illustrate a presumption to you. The presumption is that the course of business usually established has been followed, or a person is presumed to be innocent until proven guilty beyond a reasonable doubt. Those presumptions are evidence, but they must be overcome by evidence which satisfies you to a moral certainty and beyond a reasonable doubt that a person is not innocent or that the course of business has not been followed.

An inference, on the other hand, is a deduction which the reason of the jury draws from other facts which are proved. An inference must be founded on another fact or facts proved and be such a deduction from those facts as is warranted by a consideration of the usual propensities or passions or habits of men, or the particular propensities or passions or habits or customs of the person whose act is in question, or by the course of business, or by the course of nature. Now, the word "propensity" as I have used it, means any natural or habitual inclination [328] or tendency.

You are not bound to decide in conformity with the testimony of any number of witnesses which does not produce conviction in your mind as against the declarations of a lesser number of witnesses, or as against a presumption, or against other evidence which appeals to your minds with more convincing force. This rule of law does not mean that you are

at liberty to disregard the testimony of a greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does not mean that you are to decide an issue by the simple process of counting the number of witnesses who have testified. It does mean that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

The testimony of one witness, entitled to full credit, is sufficient proof for any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary, if, from the whole case, considering the credibility of the witnesses and after weighing the various factors of evidence, the jury should believe that there is a balance [329] of probability pointing to the accuracy and honesty of the one witness.

In weighing the testimony of witnesses it is proper for you to consider those factors of human nature which, either with or without any wrongful intention, may obstruct the giving of perfectly true testimony. Those factors are suggested by these questions: Did the witness have full opportunity to learn the truth? If so, did he have the intelligence and purpose to ascertain the facts? What was the advantage or disadvantage of his point of observation? Does the evidence show that the witness had a motive for favoring, or an inclination to favor, any party? Was he, in other words, a biased or impartial witness? What degree of intelligence, what quality of memory, what grade of

moral purpose, so far as concerned this case, were revealed by his appearance, manner of testifying, and all other evidence in the case? Was the testimony reasonable and consistent within itself and with uncontradicted facts? Was there any timidity, physical handicap, lack of ability in self-expression or other condition that placed the witness at a disadvantage or caused his testimony to appear on the surface as being less [330] trustworthy than it really was? Was the witness without fault of his own, confused or embarrassed, and thus placed in a light not truly representative?

Should you consider any of these questions, either in your own private reasoning or in open discussion, you must look for an answer only to the evidence admitted in the trial of this action.

Any evidence that has been received of an act, omission or declaration of a party which is unfavorable to his own interests should be considered and weighed by you like any other admitted evidence, but evidence of the oral admission of a defendant, rather than his own testimony in this trial, ought to be viewed by you with caution.

From time to time counsel for one or the other parties has interposed objections to evidence. Counsel not only have the right, but the duty, to make any and all objections which are deemed advisable or appropriate, and no inference or presumption can or should be indulged in one way or the other by reason of the interposition of such objections.

At times throughout the trial the judge has been called upon to pass on the question of whether or

not certain offered evidence might or might [331] not properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law, and in admitting evidence to which an objection might have been made, the judge does not determine what weight should be given such evidence, nor does he pass on the credibility of any witness. As to any offer of evidence that was rejected by the judge, you, of course, must not consider the same, and as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

The law does not require an accused person to prove his innocence, which in many cases might be impossible, but on the contrary, the law requires the prosecution to establish beyond a reasonable doubt and by legal evidence his guilt, and all the elements of his guilt. If the Government fails to so prove beyond a reasonable doubt and to a moral certainty all the elements of the offenses charged here, including criminal intent and wilfulness, as I shall outline that to you later, you must find the accused not guilty. [332]

You must not allow yourselves to be led to convict the accused in this case in order to satisfy a fear that some offense may go unavenged or unpunished, or for the purpose of deterring others from the commission of any like offenses. No such specious argument or reason can be weighty enough to justify

you in laying aside that just and humane rule of law which requires you to acquit the accused person unless every fact necessary to establish his guilt is proved to you beyond a reasonable doubt and to a moral certainty, and, of course, suspicion is not evidence.

You are instructed that mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that upon the doctrine of chance it is more probable that the accused is guilty than innocent to warrant a conviction. The accused must be proved to be guilty so clearly that there is no reasonable theory upon which he can be said to be innocent when all the evidence is considered together. Mere opportunity of the accused to commit the crime charged is insufficient to justify a verdict of guilty, and in every criminal case the proof must substantially conform to the material allegations of the indictment.

By the arrest of the defendant and the [333] return of the indictment, no presumption whatsoever arises to indicate that the defendant is guilty, or that he had any connection or responsibility for the act charged against him. A defendant is presumed to be innocent at all stages of the proceedings until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt and to a moral certainty, and this presumption of innocence follows him to the jury room to be weighed by you as evidence along with the other evidence. This rule applies to every material element of the offense charged, and as I have

indicatd, there are several and I shall outline them to you.

Now, "reasonable doubt" has been variously defined. I will read you the legal definition in a moment, but my own definition of a reasonable doubt is one that you can probably remember very easily. A reasonable doubt is a doubt that you can assign a good cause for having. Legally defined, a reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence [334] submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs. Reasonable doubt is not a mere possible or imaginary doubt, or a bare conjecture, for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt, as the same has been defined to you. Without it being restated or repeated again, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying each and every one of the instructions.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or bias, to apply a strained construction, one that is

unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you might reach a contrary conclusion. Whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated [335] equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

Where two or more equally reasonable inferences may, in the light of all the evidence, be drawn from a fact shown, that inference leading to a conclusion of innocence should be accepted rather than one leading to a conclusion of guilt. In order to sustain a conviction on circumstantial evidence, all the circumstances proved must not only be consistent with each other, but they must be consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.

If the circumstantial evidence relied upon in a case is such that it may reasonably lead to two opposite conclusions, one pointing to the guilt of the defendant, and the other to his innocence, then it is not sufficient to convict upon, for in such an event, the jury must adopt the hypothesis of innocence and find an accused person not guilty.

You are the sole judges of the credibility [336] and the weight which is to be given to the different witnesses who have testified upon this trial and to the evidence which has been introduced. A witness

is presumed to speak the truth. This presumption, however, may be repelled by the maner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity, or by his motives, or by contradictory evidence.

In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or you may disbelieve the whole or any part of the evidence or testimony of any witness as may be dictated to you by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all the circumstances under which the witnesses testified, as I have heretofore delineated them to you, and in addition to that the relation that he might bear to the Government or to the defendant, the interest he may have in the case, the manner in which he might be affected by the verdict, and the extent to which he is contradicted or corroborated by other witnesses or other evidence, if at all, and every matter that tends reasonably [337] to shed light upon the credibility of the witnesses.

If a witness has shown knowingly to have testified falsely at this trial touching any material matter, the jury should distrust the testimony of that witness in other particulars, and in that case you are at liberty to disregard the whole of that witness' testimony.

The law does not require the defendant to take the witness stand in his own defense. The defendant in this case did not take the witness stand, but

because of that fact you are not to indulge in any inference or presumption whatsoever concerning his guilt or innocence. The mere fact that a witness is connected with the Government of the United States in any capacity whatsoever does not mean that the testimony of such a witness is entitled to any greater weight or credence by reason of that fact alone. You will consider the testimony of any officer or employee of the United States Government the same as you would consider the testimony of such person if he were not so employed.

In every crime or public offense there must exist a union or joint operation of act and intent. To constitute a criminal intent, it is [338] merely necessary that a person intended to do such an act which, if committed, will constitute a crime. This does not mean that one must intend all the consequences of his conduct or that he must know that such conduct is unlawful to be guilty of a public offense such as is charged in this case. Criminal intent must be proved beyond a reasonable doubt, but since it is psychologically impossible to enter the mind of the accused to find the intent at the date of the alleged offense, it may be established by circumstances and conduct, both before, at, and subsequent to the acts charged.

The defendant's act and conduct considered in their relation to the charge made, may establish satisfactorily a criminal intent notwithstanding the declaration of the defendant that no such intent was present in his mind. The law presumes that

every man intends the natural and ordinary consequences of his acts.

Wrongful acts, knowingly, wilfully and deliberately committed cannot be justified on the ground of innocent intent. The color of the act, done with the knowledge of its natural or necessary results, determines the complexion of the intent. [339]

You should examine all of the evidence, all of the facts and circumstances which tend to shed light on what the intent may or may not have existed as of the time charged in the indictment.

If a material witness is not produced by either side and is available to that side, you may infer that the testimony of such witness not produced would be adverse or against the side which failed to produce him.

You cannot find the defendant guilty upon the remaining count in the indictment unless you are convinced beyond a reasonable doubt by the evidence of the truth of every material allegation and element of such count.

Coming now to the particular charges in this case. I have heretofore charged you that the return in the indictment is no evidence of the guilt of the defendant. The defendant pleaded not guilty to this count, the remaining count 3, which will be shortly placed with you to respond as a jury with a verdict as to whether or not the defendant is or is not guilty as to that count.

Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a [340] principal.

Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such.

Now, there is a distinction between the civil liability of a defendant and the criminal liability, and this is, as you know, a criminal case. The defendant is charged under the law with the commission of a crime, and the fact that he has or has not settled the civil liability for the payment of the taxes claimed to be due to the United States is not to be considered by you in determining the issues in this case, except as it may throw some light on the intent of wilfulness of the defendant.

An attempt to evade income taxes is a separate offense for each year.

The fact that an individual's name is signed to a filed return should be *prima facie* evidence for all purposes that the return was actually signed by him.

The indictment in this case is brought under the provisions of Title 26, Section 145(b), the material portions of which I shall now read to you:

“Any person who wilfully attempts in any [341] manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a crime.”

The act prescribes the punishment, but you are not to be concerned with that, as in the event you should arrive at a verdict of guilty, the respon-

sibility for the determining of any punishment rests solely upon the judge.

The indictment in this case, in count 3, I will read that count to you:

“That on or about the 7th day of January, 1948, at Phoenix, County of Maricopa, State and District of Arizona, Claude E. Spriggs did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Arizona at Phoenix, a false and fraudulent income tax return wherein it was stated that his net income for said calendar year was the sum of \$1,928.19 and that the amount of tax due thereon was none, whereas, as he then and there well knew, his net income for said calendar year was [342] the sum of \$7,048.95, upon which said net income there was owing to the United States of America an income tax of \$1,058.03.”

There is another provision in the statute which makes it an offense to file a false return. You must take note of the fact that the defendant is not charged here with having filed a false return. He is charged here with a wilfull attempt to defeat his income tax. If you find that this return was false, and you do not find it was an attempt to defeat his tax—evade and defeat his tax, then you must acquit him. You may find that his effort to defeat and evade the tax occurred and he is guilty of that offense even though you may find under

the evidence that the precise and exact amount of tax claimed by the Government to be due for the year 1947 has not been proven, and as a matter of fact, the Government has conceded that they have not proven the total amount of income, so that the tax due under any calculation of the Government's theory of the case is less than the amount of \$1,058.03, but it is for you to determine whether or not there is a substantial variance between the amount of \$1,058.03 and the amount of tax which it is asserted by the Government that he attempted to [343] defeat and evade.

You are instructed that there is no provision in the statute or in the regulations as to any form or the precise contents on an income tax return. It is required that you shall file a return showing your gross income.

Section 22 of Title 26 of the United States Code defines "gross income," as follows:

" 'Gross income,' includes gains, profits and income derived from salaries, wages, or compensation for personal services, of whatever kind and in whatever form paid, or from professions, vocation, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."

Under the provisions of the Internal Revenue Law, the Commissioner of Internal Revenue is

authorized to prescribe regulations. He has prescribed Regulation 111. There are certain provisions in that regulation which I shall read to you, 29.23 (1)-1; (1)-2; (1)-4 and (1)-5 as [344] far as they are applicable.

(1)-1 relates to depreciation: "A reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business, or treated under another section of the code as held by the taxpayer for the production of income," and you are instructed that the property involved here, what street is it?

Mr. Choisser: Henshaw.

The Court: The Henshaw property—"as held by the taxpayer for the production of income, may be deducted from gross income. For convenience such an allowance will usually be referred to as depreciation, excluding from the term any idea of a mere reduction in market value not resulting from exhaustion, wear and tear, or obsolescence. The proper allowance for such depreciation is that amount which should be set aside for the taxable year in accordance with a reasonably consistent plan, not necessarily at a uniform rate, whereby the aggregate of the amounts so set aside, plus the salvage value, will, at the end of the useful life of the depreciable property, equal the cost or other basis of the property determined in accordance with another section [345] of the act. Due regard must also be given to expenditures for current upkeep." You will note there is no provision or requirement

that a specific percentage can or may or shall be deducted for depreciation.

29.23 (1)-2, in its material portions, reads, as follows:

“Depreciable property.

“The necessity for a depreciation allowance arises from the fact that certain property used in the business, or treated as held by the taxpayer for the production of income, gradually approaches a point where its usefulness is exhausted. The allowance should be confined to property of this nature. In the case of tangible property, it applies to that which is subject to wear and tear, to decay or decline from natural causes, to exhaustion, and to obsolescence due to the normal progress of the art, as where machinery or other property must be replaced by a new invention, or due to the inadequacy of the property to the growing needs of the business. It does not apply to inventories or to stock in trade, or to land apart from the improvements or physical development added to it.”

Section 29.23 (1)-4, in its material portion, [346] reads, as follows:

“The capital sum to be replaced by depreciation allowances is the cost or other basis of the property in respect of which the allowance is made. To this amount should be added from time to time the cost of improvements, additions, and betterments, and from it should be deducted from time to time the amount of any definite loss or damage sustained by the property through casualty, as distinguished from

the gradual exhaustion of its utility which is the basis of the depreciation allowance.”

The material portions of Section 29.23 (1)-5, “Method of computing depreciation allowance,” reads, as follows:

“The capital sum to be recovered shall be charged off over the useful life of the property, either in equal annual installments or in accordance with any other recognized trade practice, such as an apportionment of the capital sum over units of production. Whatever plan or method of apportionment is adopted must be reasonable and must have due regard to operating conditions during the taxable period. The reasonableness of any claim for depreciation shall be determined upon the conditions known to exist [347] at the end of the period for which the return is made. If the cost or other basis of the property has been recovered through depreciation or other allowances no further deduction for depreciation shall be allowed. The deduction for depreciation in respect of any depreciable property for any taxable year shall be limited to such ratable amount as may reasonably be considered necessary to recover during the remaining useful life of the property, the unrecovered cost or other basis.

“Therefore, taxpayers must furnish full and complete information with respect to the cost or other basis of the assets in respect of which depreciation is claimed, their age, condition, and remaining useful life, the portion of their cost or other basis which has been recovered through depreciation al-

lowances for prior taxable years, and such other information as the Commissioner may require in substantiation of the deduction claimed.”

Now, previous good character of the defendant has been introduced, and if such has been satisfactorily shown to you, you may take that into consideration in connection with the other evidence in the case to determine the guilt or innocence of the defendant, and if in your judgment [348] as reasonable men it is warranted, you may acquit solely on the basis of character evidence.

Now, there is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question which depends upon evidence presented to them for the exercise of their judgment. You are expected to use your good sense, to consider the evidence for the purpose only for which it was admitted in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no reasonable doubt remains the Government is entitled to the verdict, for to the jury, to you, belongs exclusively the duty to determine the facts.

Now, if the judge has said or done anything which has suggested to you that he is inclined to favor the claims or positions of either party, either the Government or the defendant in this

case, you will not suffer yourselves to be influenced by that suggestion. The judge has not [349] expressed nor intended to express, or intimated or intended to intimate, any opinion as to what witnesses are or are not worthy of credence, what facts are or are not established, except those which have been conceded by the parties, what inferences should be drawn from the evidence, if any, and if any expression of the judge has seemed to indicate to you any opinion relating to any of these matters you are instructed to disregard it.

You should not consider as evidence any statement of counsel made during the trial unless such statement was made as an admission or stipulation conceding the existence of a fact or facts.

It is your duty as jurors to consult with one another when you go to the jury room and to deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment in the case.

To each of you I would say that you must decide the case for yourselves, but you should do so only after a careful consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, none of you [350] should vote either way, nor be influenced in so voting for the single reason that a majority of the jurors are in favor of such a vote. On other words, you should not surrender your honest conviction concerning the effect or weight of the evidence, or the guilt or innocence of the defendant, for the mere purpose

of returning a verdict, or solely because of the opinion of other jurors.

The final test of the quality of your service will lie in the verdict which you return to this court room, and not in the opinions which any of you may hold as you leave the jury box.

Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. And to that end the Court would remind you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and the declaration of the truth.

Remember that you are not partisans or advocates; now you are judges.

The Clerk has prepared a form of verdict. You will retire to the jury room and you will select one of your members as foreman. After you have reached a verdict you will fill in the blank— [351] when all twelve of you have arrived at a verdict you will fill in the blank spaces provided on the form, and date it and sign it and you will return it to the court room. You will remember that when you are deliberating you will be required to be kept together. It will not be permissible for any person to speak to you or for you to speak to any other person except to me, the Judge, and then only through the bailiff.

The Clerk will swear the bailiff.

The Clerk: Your Honor, the bailiffs both have been sworn.

The Court: Have they? Are there any further exceptions?

Mr. Thurman: None from the Government.

Mr. Choisser: No exceptions.

The Court: Well, I suppose that it may be stipulated that the motion that counsel stated in chambers——

Mr. Choisser: Yes.

Mr. Thurman: Yes, sir.

The Court: May be deemed to have been made.

Mr. Choisser: Yes, sir.

The Court: And at the time denied. Very well, you will retire to the jury room. If you [352] have not arrived at a verdict by 12:30, I will send you to lunch.

(Thereupon the jury retired to the jury room to deliberate on its verdict at 12 o'clock noon of the same day.) [353]

Reporter's Certificate

I hereby certify that that portion of the proceedings contained in the foregoing typewritten pages numbered 1 to 228 and 272 to 353, both inclusive, is fully and accurately contained in the shorthand record made by me at the trial of the above-entitled cause, and that said typewritten pages constitute a full, true, and accurate transcript thereof, and the whole thereof.

Dated Phoenix, Arizona, this, the 15th day of December, 1951.

/s/ LOUIS L. BILLAR,

Official Court Reporter.

Reporter's Certificate

I hereby certify that that portion of the proceedings contained in the foregoing typewritten pages numbered 229 to 271, both inclusive, is fully and accurately contained in the shorthand record made by me at the trial of the above-entitled cause, and that said typewritten pages constitute a full, true, and accurate transcript thereof, and the whole thereof.

Dated Phoenix, Arizona, this, the 12th day of December, 1951.

/s/ JOSEPH T. MORGAN,
Official Court Reporter.

[Endorsed]: Filed Jan. 21, 1952.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD
ON APPEAL

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, vs. Claude E. Spriggs, Defendant, numbered C-9558 Phoenix, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the City of Phoenix, State and District aforesaid.

I further certify that the said original documents, and said copies of the minute entries, constitute the record on appeal in said case as designated in the Appellant's Designation and in the Appellee's Designation filed therein and made a part of the record attached hereto and the same are as follows, to wit:

1. Indictment.
2. Bill of Particulars (which was not designated).
3. Plea of not guilty (Minute entry of June 18, 1951, which was not designated).
4. Proceedings of Trial (Minute entry of November 14, 1951).
5. Further Proceedings of Trial, including Deft's Oral Motion for Judgment of Acquittal as to Count 3 and Order denying said motion (Minute entry of November 15, 1951).
6. Further Proceedings of Trial, including return of verdict (Minute entry of November 16, 1951).
7. Exhibits in Evidence, to wit: Government's Exhibits 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 17, 21, 28, 33 and 34; and Defendant's Exhibits A and B.

8. Verdict.
9. Reporter's Transcript of Evidence.
10. Motion for Judgment of Acquittal notwithstanding the Verdict (which was not designated).
11. Motion for New Trial.
12. Order denying Defendant's Motion for New Trial and Motion for Judgment of Acquittal Notwithstanding the Verdict (Minute entry of November 19, 1951).
13. Judgment.
14. Notice of Appeal.
15. Statement of Points upon Which Defendant Intends to Rely Upon Appeal.
16. Appellant's Designation of Record on Appeal.
17. Appellee's Designation of Record on Appeal.
18. Order Extending Time to Docket Appeal (Minute entry of December 21, 1951).
19. Order Extending Time to Docket Appeal (Minute entry of January 25, 1952).

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$5.20 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 13th day of February, 1952.

/s/ WM. H. LOVELESS,
Clerk.

[Endorsed]: No. 13258. United States Court of Appeals for the Ninth Circuit. Claude E. Spriggs, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed February 15, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 13258

CLAUDE E. SPRIGGS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION

It Is Hereby Stipulated between W. T. Choisser, attorney for the appellant, Claude E. Spriggs, and Frank E. Flynn, United States Attorney for the District of Arizona, attorney for the appellee, that the testimony of the following witnesses may be deleted from the Reporter's Transcript in the printing of the Abstract of the Record:

Robert R. Weaver

Bill McBride

Wilburn Brown

Kemper P. Mauzy

Kent B. Pomeroy

Thomas S. Krone

Stuart M. Bailey

Stephen B. Rayburn

Otis Sasser

H. M. Vanderberg

Jessie Gomez

Harry C. Jones

Vernon Householder

Victor H. Pulis

Helen Pitman

Fred O. Wilson

Dated at Phoenix, Arizona, this 19th day of March, 1952.

/s/ W. T. CHOISSER,

Attorney for Appellant.

FRANK E. FLYNN,

United States Attorney for the District of Arizona,
Attorney for Appellee.

[Endorsed]: Filed March 20, 1952.